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The Supreme Court (SC) has rejected the appeals in cassation lodged by certain **car dealers found liable by judgments of the *Audiencia Nacional* in relation to certain CNMC procedures for anti-competitive practices**. The SC considers that the issues raised in these appeals are substantially identical to those raised in the appeals in cassation 3835/2019, 3841/2019, 3843/2019, 3850/2019 and 4052/2019, although in relation to dealers of a different brand (see reference in Automobile Newsletter No. 9) and, therefore, as it did in those cases**, it rejects these appeals**. It is of the opinion that there is no objective interest from a cassational point of view as there is already case law on the content of the infringements by subject matter (facts as found of participation in a cartel of dealers) and concludes that there is already case law on the infringement of the doctrine of accidental finding and the validity of prima facie evidence to rebut the presumption of innocence, and what the appellants really raise is a disagreement with the application made by the Division.

Orders of the Supreme Court (Civil Division) of 14 January 2020, 21 January 2020, 28 January 2020, 4 February 2020, 18 February 2020 and 25 February 2020. Damages in the "truck cartel case"

As we pointed out in the case law reviewed in the previous Automobile Newsletters (no. 8 and 9) in Orders of the Supreme Court (Civil Division) of 5 November 5 and 10 December 2019 (among others), the SC was of the opinion that **the jurisdiction closest to regulating private competition law actions is the one established for cases of unfair competition, as provided in Article 52(1)(12) of the Civil Procedure Law,** which confers jurisdiction on the court of the place where the defendant has its establishment, and in the absence of such court, on the court of the domicile or place of residence. As a last subsidiary jurisdiction, when the defendant is not domiciled in Spain, the jurisdiction shall be that of the place where the act was performed or where its effects occur. The place where the harmful act was performed, which is the cartel agreement, may lead to confusion, but the same does not apply to the place of production of effects, which is where the claimant sees the overpricing passed on, which is the place of purchase of the vehicle. And, should the claim lie with judges from more than one place, the claimant may choose any of them.

Judgment of the Barcelona Audiencia Provincial of 31 January 2020, judgment No. 46/2020. Damages requested from dealer for use of incorrect code to obtain subsidy from the MOVELE programme

The appeal lodged by ROMAUTO GRUP CONCESSIONARIS S.L., dealer sued by SETRICAR S.L., a **carsharing company who turned to the defendant to acquire an electric vehicle by means of a leasing contract and whose acquisition was subsidised by the MOVELE programme,** is rejected. The dealer's manager used **an incorrect code when identifying the beneficiary company** and did not act diligently in obtaining the information directly from the customer, so the customer was unable to receive the aid.

The carsharing company claimed damages. The Court is of the opinion that the arguments in the first instance ruling were correct and, in accordance with the legal doctrine of the Constitutional Court and the Supreme Court, the reasoning is admitted by reference to a previous ruling, when the first instance ruling is correct, without the need to repeat the arguments set out in the finding. Therefore, the Court upholds the order to pay damages imposed on the delaer in the amount of EUR 7,216.87.

Judgment of the Supreme Court (Judicial Review Division) of 27 February 2020, judgment no. 289/2020. Voidness of certain provisions of Royal Decree 617/2017, of 16 June, regulating the direct granting of aid for the acquisition of alternative energy vehicles, and for the implementation of electric vehicle charging points in 2017 (MOVEA Plan)

The Regional Government of Catalonia ("Generalitat") has applied for judicial review against the National Administration and the commercial companies Viesgo Infraestructuras Energéticas S.L. and Emplazamientos Radiales S.L, requesting an adjudiciation of **voidness in respect of Royal Decree 617/2017, of 16 June, regulating the direct granting of aid for the acquisition of alternative energy vehicles, and for the implementation of charging points for electric vehicles in 2017 (MOVEA Plan),** due to several of its provisions having invalidating defects as provided in Article 47 of the Common Administrative Procedure (Public Administrations) Act 39/2015 of 1 October, that is, for violation of the principle of legislative hierarchy, specifically in matters of energy and environment.

The Court upholds in part the application by holding Articles 7(2), 8, 9, 10, 13, 14, 15, 16 and 17 void

Article 7, with regard to the processing of aid under the Plan, in accordance with the provisions of constitutional ruling 64/2018 of 7 June, as it prevents the Administration of the Generalitat from

handling the processing of applications through its own telematic resources by providing that this is done through the system set up by the Ministry of Economy, Industry and Competitiveness. However, it does not allow for this in terms of validity and time limits, since it must be published in the Official Journal of Spain, the State thus fixing the date on which the system of aid starts and the date on which the time limit lapses. With regard to Article 10, the State was also wrongly assuming the powers of the Generalitat.

Article 8, since it bypasses the powers of the Generalitat to manage the granting of aid by providing only for the intervention of bodies of the National Administration as those competent to resolve the procedure for the granting and monitoring of subsidies.

Article 9, because it also bypasses t regional powers in the management of the processing of applications for the granting of public aid (in the field of energy and environment) by indicating that it must be a collaborating entity which, according to Article 17, must provide the documentation justifying the payments, and as it falls under the remit of the regions, it is also held void.

Article 13, in which the State assumed the powers belonging to the Regions to manage and resolve cases involving the granting of public aid; and Article 14, in which the State intervened in the powers of the Generallitat to monitor compliance with the obligations imposed on the beneficiaries, despite not being responsible for financial control.

Article 15, since the Regions did not have access to the Plan's software, which infringes their powers in the management of aid; and Article 16, which did not allow the Regions to verify compliance with the obligations of aid beneficiaries by establishing it as the remit of the Ministry of the Economy, Industry and Competitiveness.

List of Judgments of the Supreme Court (Judicial Review Division), judgments nos. 332/2020 of 6 March and 349/2020 of 10 March 2020. Voidness of the restrictions imposed on Passenger Service Vehicles (PSVs) by Royal Decree 1076/2017

Important Supreme Court rulings that facilitate the entry and exercise of PSV activity in the market. The Court upholds the appeals lodged by Uber BV and the CNMC (Spanish Markets and Competition Authority) **voiding those provisions of Royal Decree 1076/2017 that prohibit the transfer of PSV authorisations within a period of two years and those that establish the obligation to communicate service data telematically, which are recorded without time limit.**

The ruling is based on the **violation that these provisions involve for the Market Unity Guarantee Act and its principles of necessity and proportionality in that they do not prove a justification based on the safeguarding of the public interest,** a requirement set out in that Act, when public authorities lay down limits or requirements for access to or exercise of a business activity in accordance with those contained in Act 17/2009 on free access to service activities and their exercise.

The Court analyses the justifications and does not consider the reason set out in the preamble to the Royal Decree to be true, since it does not seek to prevent applications for authorisations for speculative purposes whose purpose is solely to be able to market them rather than to use them commercially. Such marketing cannot be described as fraudulent since there is no legislation requiring the applicant to carry out the transport acts himself. Nor does it consider that the purpose of avoiding mass applications in the future is certain, bearing in mind that the 1/30 restriction was in force at the time the Royal Decree was passed.

Following this analysis, it is clear that the ban on the transfer of authorisations for up to two years is a measure of a purely economic nature, as it seeks to limit supply, and that its real purpose was to prevent the authorisations requested prior to Royal Decree 1075/2015 from abruptly entering the market, a measure which violates the prohibition in the Market Unity Guarantee Act on establishing requirements of this nature.

On the other hand, with regard to the **obligation to communicate data,** the Court clarifies that although it constitutes a justified administrative requirement, it is **disproportionate** and contrary to law, due to the irrelevance of the information to be provided and that it only succeeds in creating "**a database at national level which makes it possible to establish patterns of behaviour in relation to the mobility** and use of the service of this urban transport of perfectly identified natural persons". Not only does this discourage the use of the service, but it could well be in **breach of the principle of minimising data collected by the European Regulation on personal data protection.** In addition, the ruling states **that there are already other measures "less restrictive or distorting and with less impact on the sphere of the users affected", such as the need to supplement and retain for a time a "road map"** (as provided for in Order FOM/36/2008) that will only be displayed when required by the inspection services, as well as other external control measures that allow the identification of vehicles that provide service outside their territory.

Judgment of the Supreme Court (Civil Division) of 11 March 2020, judgment no. 167/2020. Joint and several liability of the manufacturer - Dieselgate case

This Supreme Court ruling confirms the **joint and several liability of the Seat make to pay damages in the *Dieselgate* case for which Talleres Menorca, S.L. was found liable in the second instance.**

The Court of First Instance dismissed the claim against Seat S.A. and Talleres Menorca S.L. in which the claimant requested an adjudication of voidness of the vehicle purchase contract and compensation for its fraudulent marketing (incorporation of *software that* manipulated the measurement of contaminating gas emissions).

In the second instance, however, the Provincial Court partially upheld the appeal, condemning only Talleres Menorca S.L. to pay compensation for non-pecuniary damage in the amount of 500 euros to the purchaser. The latter lodged an appeal in cassation asking for the judgment to be extended to Seat S.A. as it considered that it had standing as manufacturer of the vehicle.

The appeal was upheld by the Supreme Court, **which ordered Seat S.A. to jointly and severally** pay the stipulated compensation, since, despite the fact that no contract was signed, it made it clear that there are indeed links of legal significance between the manufacturer and the buyer and that it must be considered a unitary legal operation (from the manufacture of the vehicle and its distribution to its delivery to the end buyer). Therefore, the manufacturer is in breach when the vehicle does not meet the characteristics with which it was offered on the market.

The SC considers that, despite the fact that they have not formally concluded a contract between themselves, legally significant links are established between the manufacturer and the end purchaser, such as those relating to the provision of the warranty, in addition to that provided for by law, which is usual in this sector, or the enforceability by the end consumer of the services offered in the advertising of the product, which has generally been carried out by the manufacturer itself and which form part of the contract of sale by which the consumer acquires the vehicle. Furthermore, the importer and the distributor often belong to the same corporate group as the manufacturer, or are integrated into a commercial network in which the manufacturer plays an important role, as is currently the case with car dealer networks.

Therefore, the SC resolves that if the car does not meet the characteristics with which it was offered, with respect to the final buyer there is not only a breach by the direct seller, but also by the manufacturer who put it on the market and advertised it. And the damage suffered by the buyer corresponds directly to the breach attributable to the manufacturer.

In these circumstances, the SC considers that limiting the liability for damages to the distributor who sells directly to the final purchaser may prejudice the legitimate rights of the purchasers who, in the case of consumers, have expressly included as one of their basic rights "compensation for damage and reparation for losses suffered" (Article 8.c of Royal Legislative Decree 1/2007, of 16 November). Their right to compensation for damage may be frustrated if the seller becomes insolvent.

The SC also considers that the seller's liability regime may be less satisfactory for the buyer than that applicable to the manufacturer, in accordance with the distinction contained in article 1107 of the Civil Code, because it is possible for the seller to be a good faith infringer while the manufacturer is a fraudulent infringer. All these issues are taken into account to finally attribute joint and several liability to the trademark.

Legislation

Spain

Public Consultation on the Instruction on National Approval of Automotive Machinery (AM) powered by Compressed Natural Gas (CNG). Ministry of Industry, Trade and Tourism of 7 February 2020

Currently, Schedule VII of Royal Decree 750/2010 of April 4 does not provide for the regulation of CNG, while the reality reflects an increase in AM that incorporate this gas as part of the power system thanks to the advanced technology used in passenger and commercial vehicles (categories M and N). Its efficiency lies in the lower production of polluting gases.

The safety aspects of road vehicles (Categories M and N) are covered by UN Regulation No. 110, but AMs are not included in its scope. These may be approved as national type in accordance with the observations in the information document in Appendix 2 of Schedule VII to Royal Decree 750/2010. The components of the system shall be approved according to Part I of UN Regulation No. 110 or comply with the requirements of Directive 2010/35/EU, and their functionality shall be assessed according to the requirements of paragraph 18 of Part II of that Regulation.

The CNG system must be installed having the best possible protection against possible damages. No device other than those strictly necessary for the correct operation of the engine shall be connected to it, but it shall be possible to connect a heating system for the cabin. No component shall protrude from the vehicle's outer line or be located at a distance equal to or less than 100 mm from the exhaust or a heat source.

The minimum elements of the CNG system are detailed, among them the tank, a pressure indicator, etc.; as well as those that may be included beyond the necessary ones.

The tanks shall be permanently installed on the vehicle more than 200 mm above the road surface and shall not be installed in the engine compartment. CNG fuel tanks shall be mounted in a gas-tight housing covering the fittings of the tanks, which shall be in open communication with the atmosphere and whose ventilation hole shall not discharge into a wheel arch or point to a heat source.

Requirements are also set for rigid and flexible fuel pipes and for the fuel selection system and electrical installation.

Manual on Vehicle Refurbishments. Ministry of Industry, Trade and Tourism, 28 February 2020

The sixth revision and public consultation of the vehicle refurbishment manual has undertaken, which will be **applicable from 15 April 2020 and which** establishes the procedures and requirements to be met by vehicles in categories M, N, O, L, Quads and UTV, agricultural vehicles and construction and/or service vehicles in order to carry out their refurbishment. **It indicates the types of modifications that can be made to each type of vehicle and the documentation required for processing them.** Some of the elements to which these modifications refer are the drive unit, axles and wheels, suspension, steering, brakes, bodywork.

In any case, it will be necessary to provide the technical project, the final work certification, the compliance report and the workshop certificate in order to process the refurbishment.

The responsibility for checking the correspondence between the documentation and the vehicle shall be the Vehicle Inspection ("ITV") Station by means of the unitary inspection as stipulated in Section V of the ITV Station Inspection Procedure Manual. Once checked, it shall be recorded on the ITV Card.

Order TMA/178/2020, of 19 February, amending the Order of 16 December 1997, regulating access to State roads, service roads and the construction of service facilities. Official Journal of Spain no. 52, of 29 February 2020

This Order contemplates questions relating to the **authorisation of facilities for the supply of electrical energy in order** to extend the scope of application of the Order on accesses of 16 December 1997, which implemented the provisions of the General Regulations on Roads.

If the charging facility is planned as supplementary to the main one - and unlike the case where the facility is planned autonomously, where the new authorisation must impose full respect for the legislation in force - it seems reasonable that the adaptation of the accesses to the subsequent legislation should not be required (as is now generally established by the first additional provision of the Access Order), since the electric charging installation is an additional or supplementary service to the users of the already existing main facility, and hardly generates added traffic, so - under the current conditions, it is insisted - it does not generally have a significant negative effect on the level of service and road safety on the roads. If applicants for this type of supplementary facility were to be burdened with the task of bringing access into line with current legislation, many individuals would be discouraged from promoting the implementation of public charging points in their businesses, contradicting the commitment of the Ministry of Transport, Mobility and the Urban Agenda to the deployment of an extensive alternative fuel infrastructure.

Therefore, the new Order provides that for the installation of electric charge points it will not be necessary to adjust the accesses to the legislation passed after the authorization is granted when it is in already existing and authorised facilities, provided that the new use of electric charge is associated with the main authorised use and there is no negative effect on road safety.

With regard to the **authorisations for the installation of electricity charging points in existing service facilities** and in operation, duly authorised by the Directorate-General for Roads, the **requirements are relaxed** and it is established that these will be granted to the holder of the authorisation of the main facility or to the holder of the electricity charging point, which will be evidenced by contract. If the access to the facilities is located in a high accident section, it must comply with the legislation in force.

It also provides for the provisional nature of certain elements to be installed between the outer edge of the easement area and the building boundary line, without impairing road safety; as well as compliance with minimum distances. The owner of the main facility is responsible to the Directorate-General dor Roads, although there is the possibility of joint and several liability between the

owners of the main facility and of the electric charge point if both agree. It is also possible to transfer ownership to a third party by giving prior notification to the Directorate-General for Roads. The latter may, at any time, modify or temporarily or permanently suspend the authorisation for access to the facilities and the authorisation for the installation of electric charging points for tax reasons.

Royal Decree-Law 16/2020, of 28 April, on procedural and organisational measures to address COVID-19 in the area of the Administration of Justice. Official Journal of Spain no. 119, of 29 April 2020. Insolvency situations

This Royal Decree-Law introduces important new features in the event that an insolvency situation arises and the requirements that would justify the need to apply for insolvency proceedings apply.

The debtor's obligation to apply for insolvency proceedings is suspended until 31 December 2020, up to which date any applications for the necessary insolvency proceedings submitted after the declaration of the 'state of alarm' will also be inadmissible.

The device of the "counterclaim" is reintroduced, that is, the possibility of renegotiating and modifying, at the request of the insolvent debtor, the composition with creditors that is in the phase of compliance during the following year from the declaration of the state of alarm. However, this possibility has limitations that must be analysed in each individual case.

During the period of one year from the declaration of the state of alarm, the bankrupt debtor will not have the obligation to request liquidation, nor will the insolvency judge be able to initiate it, as long as the debtor presents a proposal for modification of the composition and this is allowed within this period of one year.

If there is a failure to comply with a refinancing arrangement during the six months following the declaration of the state of alarm and the creditors apply to the courts for a declaration of such failure, the insolvency will not allow it for processing until one month after the end of this six-month period. Within this one-month period, the debtor must inform the Court that he has initiated or intends to initiate negotiations to modify the refinancing arrangement or reach a new one, having a period of three months to do so and submit it to the Court.

Finally, measures have been taken in the field of insolvency proceedings with regard to the qualification of certain claims, the procedures for contesting the inventory and the list of creditors.

Consultation prior to possible Ministerial Order amending Schedule I to Royal Decree 20/2017 of 20 January on end-of-life vehicles. Ministry for the Ecological Transition and the Demographic Challenge of 7 May 2020

In transposition of the provisions of Delegated Directives (EU) 2020/362 and 2020/363, of the Commission, of 17 December 2019, amending Schedule II of Directive 2000/53/EC of the European Parliament and of the Council, this Order replaces Schedule I to Royal Decree 20/2017, of 20 January, laying down the exceptions to the general rule of prohibition of the use of lead, mercury, cadmium or hexavalent chromium in materials and components of automobiles placed on the market after 1 July 2003. **The new Schedule presents changes to the dates of the scope of the exemption from the ban on the "use of hexavalent chromium as a corrosion protection for carbon steel cooling systems in absorption chillers, up to a maximum of 0.75% by weight in cooling solution, and on the use of lead in solders".**

Consultation was arranged and completed on 7 May 2020.

Royal Legislative Decree 1/2020 of 5 May, approving the recast version of the Insolvency Act. Official Journal of Spain no. 127, of 7 May 2020

The Royal Legislative Decree 1/2020 of 5 May approving the recast version of the Insolvency Act will come into force on 1 September 2020. This new regulation will be detailed in future GA-P Analysis Notes.

Europe

Commission Implementing Regulation (EU) 2020/35 of 15 January 2020 amending Implementing Regulation (EU) 2019/159 imposing definitive safeguard measures against imports of certain steel products. Official Journal of the European Union, L 12 of 16 January 2020

This Regulation amends the Implementing Regulation (EU) 2019/159 by providing that for "each of the product categories concerned, and with the exception of product category 1 and product category 25, a part of each tariff-rate quota is allocated to the countries specified in Annex IV" and by replacing the Annex to this Regulation with the Annex to the section of categories 4A and 4B of Annex IV to the Implementing Regulation (EU) 2019/159.

These amendments are due to the fact that the definitive safeguard measures imposed by Implementing Regulation (EU) 2019/159 on certain steel products were subsequently amended following a review investigation, with some parties, including the European Automobile Manufacturers' Association (ACEA), requesting the **exclusion of product category 4B (which includes metallic coated sheets used in cars) from the scope of the measures.** In response to this request, the Commission restricted the use of category 4B only to imports that could demonstrate an **end use in the automotive sector**.

However, it has been noted that any solution to implement an effective end-use procedure would still require a certain amount of time, without any guarantee of adequate and immediate corrective action. Therefore, since the measure was not working properly, the Commission considers that **Implementing Regulation (EU) 2019/159 and its Annexes** should be **amended again in order to properly reflect the situation prevailing before the introduction of the end-use requirement for categories 4A and 4B** by the amending Regulation. Therefore, the Implementing Regulation (EU) 2019/159 has been amended, **considering also that for Korea the allocation of the tariff quota volume between product categories 4A and 4B should be changed.**

The Commission takes into account that a specific mechanism delimiting the imports of the automotive steel grades under product category 4B might be needed at a later stage.

This Regulation has retroactive effect, with the end-use requirement being revoked as of 1 October 2019.

It is applicable from 1 October 2019.

Commission Delegated Regulation (EU) 2020/203 of 28 November 2019 on classification of vehicles, obligations of European Electronic Toll Service users, requirements for interoperability constituents and minimum eligibility criteria for notified bodies. Official Journal of the European Union, L 43 of 17 February 2020

This Regulation shall apply from 19 October 2021. Its Schedule I specifies the **various parameters and their vehicle classification requirements for determining tolls**. European Electronic Toll Service (**EETS**) Users shall ensure the accuracy of their data and the vehicle provided to EETS Providers, the functioning of on-board equipment while the vehicle is circulating within an EETS domain and shall use such equipment in accordance with the instructions of the EETS Provider.

Schedule II details the requirements for interoperability constituents and track infrastructure, such as maintenance of EETS elements, technical compatibility of equipment or security of stored and transferred personal data. Whereas Schedule III provides for the minimum criteria for the selection of notified bodies.

Proposal for a Commission implementing Regulation (EU) on the verification and correction of data referred to in Regulation (EU) 2018/956 on the monitoring and reporting of CO2 emissions from and fuel consumption of new heavy-duty vehicles. European Commission, 17 February 2020

The Commission will have to verify the data of certain heavy-duty vehicles once the manufacturer has communicated them. The selection of vehicles for verification will be made by the Commission

on a random basis, for a figure between 2% and 10% of the number of heavy-duty vehicles registered by the manufacturer in the relevant period. For the 2019 reporting period, the Commission will only verify the quality of data of heavy-duty vehicles registered from 1 January 2020.

Once the Commission has notified the manufacturers concerned of the identification numbers of the selected heavy-duty vehicles, the manufacturers shall provide the Commission with the original of the manufacturer's records and a copy of the engine type-approval certificate.

For such vehicles, the Commission should check certain values provided by the manufacturer to see whether they match those provided by the Member State concerned and should notify the manufacturers of any discrepancies found so that they can be corrected. Where the Commission considers such data to be valid, it shall attach them to the final data set to be published in the Central Data Register on heavy-dutyvehicles. If the Commission does not consider the data to be valid, it shall correct the CO2 emissions and publish it.

Commission Implementing Regulation (EU) 2020/239 of 20 February 2020 amending Implementing Regulation (EU) No 901/2014 with regard to the adaptation of the templates for type-approval procedures for two- or three-wheel vehicles and quadricycles to the environmental steps Euro 5 and Euro 5+ requirements. Official Journal of the European Union, L 48 of 21 February 2020

This Regulation amends Implementing Regulation (EU) No 901/2014 in order to adapt it to the changes provided for in Regulation (EU) 2019/129 which were intended to facilitate the type-approval process and to enable national authorities to verify compliance with the requirements of the Euro 5 and Euro 5+ environmental stages.

It thus amends Schedules I, IV, VII and VIII and its transitional provisions by stating that national authorities shall grant until 30 June 2020 "type-approvals to vehicle types in accordance with this Regulation in its version applicable on 11 March 2020 and until "31 December 2020, the Member States shall permit the placing on the market, registration and entry into service of vehicles based on a vehicle type approved in accordance with this Regulation in its version applicable on 11 March 2020. Schedule I incorporates the Euro 5 and Euro 5+ environmental stage identification for category L vehicles.

Commission Implementing Regulation (EU) 2020/353 of 3 March 2020 imposing a definitive anti-dumping duty and definitively collecting the provisional duty imposed on imports of steel road wheels originating in the People's Republic of China. Official Journal of the European Union L 65 of 4 March 2020

A definitive anti-dumping duty is hereby imposed on imports of steel road wheels, whether or not with their accessories and tyres. It applies to those originating in the People's Republic of

China and designed for use on road tractor units, motor vehicles for the transport of persons and/or goods, special purpose vehicles, trailers or semi-trailers not propelled by such vehicles.

Amongst others, steel wheels for road use for the power tiller assembly industry, or wheels for motor vehicles specifically designed for off-road use are outside the scope of application.

A table is included setting out the names of certain manufacturers and their rates of definitive anti-dumping duty applicable to the net, free-at-Union-frontier price, before duty, which are conditional upon presentation to the customs authorities of the Member States of a valid commercial invoice, the text of which is set out in this Regulation. Where no such invoice is presented, the duty rate calculated for the remaining companies shall apply.

The amounts secured by way of the provisional anti-dumping duty imposed by Implementing Regulation (EU) 2019/1693 shall be definitively collected.

The Regulation opens the possibility for the Commission to amend the Schedule and to attribute to one producer in the PRC the duty applicable to cooperating producers not included in the sample if it demonstrates that it did not export the steel wheels covered by this rule during the period of investigation (1 January 2018 to 31 December 2018). It should also demonstrate that it is not related to any producer subject to the measures thereunder and that it has actually exported the goods concerned or has entered into an irrevocable contractual obligation to export a significant quantity to the Union after the end of the period of investigation.

Finally, a Schedule of cooperating Chinese exporting producers not included in the sample is incorporated.

European Parliament resolution of 31 May 2018 with recommendations to the Commission on odometer manipulation in motor vehicles: revision of the EU legal framework. Official Journal of the European Union, C 76 of 9 March 2020

Odometer tampering is a widespread practice in the European Union, which harms third countries that import second-hand cars from the Union, consumers, insurers, leasing companies, etc. It also affects the market value of the vehicle, road safety, maintenance and repair costs, consumption and infringements of legislation on pollutant emissions, leading to a reduction in trust in the second-hand vehicle market in the Union.

Even so, there is no common, integrated system for exchanging information between Member States and there are some legal loopholes, such as the lack of provision for tampering control in Regulation (EU) 2017/1151, despite the fact that it obliges manufacturers to implement tamper-proof strategies.

Therefore, this Resolution provides possible solutions and requires certain actions, analysing satisfactory instruments aimed at reducing this practice, such as "Car-Pass" in Belgium and "*Nationale AutoPas"* (NAP) in the Netherlands. Both use a database that collects odometer readings at maintenance, service, repair or periodic inspection of vehicles.

Furthermore, Member States are requested to **amend their legislation in order to make this conduct a criminal offence, both for those who order the modification of the odometer and for those who change its reading.** This request is due to the fact that, although tampering with the odometer is prohibited in 26 Member States, only ten have additional measures in place and only six recognise tampering with the odometer as a criminal offence.

On the basis of the above considerations, and the threat it poses to traffic, as provided for in Directive 2014/45/EU, it also calls on the Commission to make a proposal to prevent tampering with vehicle odometers by implementing a legal framework enabling Member States to record the mandatory odometer readings taken during inspections, checks, repairs, etc.

It suggests that the Commission should make the platform of the European Car and Driving Licence Information System (Eucaris) compulsory, on the exchange of harmonised transport data between Member States, and that technical solutions should be used for odometer readings, such as *Hardware Security Modules (*HSM) and *Secure Hardware Extensions (*SHE), while manufacturers should continue to improve their solutions.

Along the same lines, it proposes to make available for cross-border exchange and customers the mandatory recording of odometer readings referred to in Directive 2014/45/EU, as well as to create a legal framework for the establishment of comparable registration databases between Member States. In any case, it stresses the urgency of compatibility and interconnection of national databases with those of the Union, while respecting data protection legislation.

It also stresses the importance of consumers themselves being informed of existing measures against odometer fraud and ways of detecting and preventing tampering with them, as well as the need to provide purchasers of second-hand vehicles with a way of checking the accuracy of the readings before purchasing the vehicle.

It also calls on the Commission to take steps to revise the legal requirements of Regulation (EU) 2017/1151 and to ensure that the same obstacles also apply to imports from third countries; stresses the need to strengthen type approval for in-vehicle safety and to establish clear criteria for monitoring the safety requirements of Regulation (EU) 2017/1151 for the effective monitoring of vehicle safety.

Another solution proposed is based on blockchain and connectivity through the creation of a European network for odometer readings, with an analysis of their cost-effectiveness, costs and benefits to be carried out by the Commission. In this sense, the *CarTrustChain* project co-financed by the European Regional Development Fund has proved to be successful in putting an end to this fraud.

Finally, it **recommends strengthening the level of security of vehicle odometer data by: monitoring the application of certain articles of Regulation (EU) 2017/1151 and introducing a test method or applying to odometer fraud those criteria that are used to assess IT security.**

Proposal for a Regulation of the European Parliament and of the Council on the labelling of tyres with respect to fuel efficiency and other parameters, amending Regulation (EU) 2017/1369 and repealing Regulation (EC) No 1222/2009. Official Journal of the European Union, C 105 of 31 March 2020

There has been an advance on this proposed regulation, which was anticipated in the previous Automobile Newsletter (No. 9). **The Council of the European Union adopted its position on 12 February 2020 and the European Economic and Social Committee voted on 24 April 2010 on the recommendation for second reading of this position, obtaining 71 votes in favour and only five abstentions.**

Complementing what was indicated in the previous Newsletter, this project from its beginning includes that tyre distributors must comply with obligations regarding the visibility of the label at the point of sale and legibility by complying with the requirements of Annex II, as well as ensuring visual advertising and the specifications of distance selling. Similarly, suppliers shall be obliged to register in the database the information set out in Annex VII as from 1 May 2021 for tyres produced after that date and by 30 November 2021 at the latest for tyres produced between the entry into force of the Regulation and 30 April 2021. They shall provide any necessary information to the type approval or market surveillance authorities.

Proposal for a directive on low-emission vehicles: improving the European Union's recharging or refuelling infrastructure. European Commission, 6 April 2020

Public consultation period opened until 29 June 2020 on the proposal for a directive whose main objective is to establish requirements that encourage the expansion of the European Union network of refueling stations for alternative vehicles, mainly electric batteries, natural gas (CNG / LNG) and hydrogen, so that with its installation all countries have a sufficient number of points of easy access and use. With all this, it is intended to achieve greater public awareness about the use of this type of less polluting vehicles and to adapt to the climate objectives of the European Union in the new European Green Agreement.

News

COVID-19 / State of alarm / The automotive sector demands a crash plan from the Government

The COVID-19 pandemic has had a very negative impact on the automotive sector, with many dealers and companies in the components sector and manufacturers affected by Temporary Collective Redundancy Procedures ("**ERTEs**") due to force majeure.

In view of this situation and the forecast of a market fall of more than 40% in 2020 and a reduction in production of 700,000 vehicles, the sector considers it necessary to take urgent measures to help reactivate and revitalise it immediately and effectively. Reactivate demand, production and employment in a way that is compatible with the objectives of decarbonisation, with the improvement of the competitiveness of the factories and plans to support investment and Industry 4.0.

For this reason, the automotive sector (Anfac, Faconauto, Ganvam and Sernauto) has presented the Government with a National Crash Plan that brings together measures to promote it. It also highlights the relevance of structural measures in the medium and long term that favour the competitiveness and development of this industry due to the current technological and environmental transition, among which it is worth mentioning the reformulation of car taxation or the promotion of recharging infrastructure for the electrified vehicle fleet, for which a progressive growth is foreseen.

Among the measures in this Plan, the one that stands out the most is a renewal aid programme worth 400 million, to be applied to the purchase of any vehicle, that is, a repetition of the Incentive Programme for Efficient Vehicles ("PIVE"), only the amounts per unit would be higher. In addition, it includes the deferral of the payment of fees and contributions, the creation of specific ICO (State-owned bank) lines for the automotive industry and the request that those ERTE's due to force majeure that had been adopted during the state of alarm can be extended after the state of alarm has ended until the company can be reasonably reactivated. A sectorial ERTE would be very effective for productivity and economic reasons for automotive distribution.

Facua, on behalf of some consumers, claims the return of part of the car insurance for not being used during the state of alarm

Due to the situation generated by COVID-19 and the state of alarm, the mobility of vehicles during this period has been significantly reduced and, even so, those with insurance have had to continue paying premiums. For this reason, Facua-Consumidores en Acción, basing its claim on the reduction of the accident rate and the provisions of Article 13 of the Insurance Contracts Act 50/1980 of 8 October, has requested that insurance companies return to consumers a proportional part of the

premiums already paid during the state of alarm or apply a reduction in future premiums, urging that the clients themselves decide between one option or another.

In total, there are more than 30 million insurance policies in force in Spain that Facua considers should be subject to refunds or bonuses, asking the Government to take measures obliging insurers to inform clients of their right.

Some responses to this situation have already been seen, such as the case of the Hello Auto insurance company which has decided to return to its customers 100% of the amounts paid for their insurance during the state of alarm, while others have given payment facilities or deferments.

MOVES 2020 Plan

In order to encourage the purchase of electric vehicles, the installation of charging points and the implementation of bicycle sharing services, and in line with the objectives of the Spanish Integrated Energy and Climate Plan ("PNIEC"), the Government has announced that it will increase the budget allocation for the MOVES Plan from 45 to 65 million euros and has extended its duration to a full year. The State Secretariat for Energy reported in April that it is expected to be published between the end of May and the beginning of June. According to these statements, the Regions will have two more months to approve their specifications before they definitively enter into force, they will have greater flexibility in terms of the percentage of the total budget for each line compared to the previous year, and they will be able to reserve 2.5% for the management of the plan.

Similarly, the Government has declared that under this Plan it will no longer be compulsory to receive aid for the purchase of a car in order to convert an old vehicle into scrap, although it will provide a greater incentive for those who do so, so that if it is withdrawn the subsidy will reach 5,500 euros while if it is not withdrawn it will be 4,000 euros.

It has also been advanced that aid could reach 70% of the total and that the maximum price of subsidised cars will be increased to 45,000 euros (in the case of large families).

This Plan, which will have a line for those acquisitions intended for '*renting*' (operating leases), will include the electric mopeds and the dealers' demo vehicles.

Likewise, the State Secretariat highlighted the future implementation of the MOVES Plan - Planes Singulares, which consists of creating aid for technological development projects in the field of mobility.

Volkswagen reaches an agreement with 200,000 Dieselgate victims

According to press reports, the Volkswagen Group reached an agreement in April to pay 200,000 victims, those who were part of the macro-class action brought by the German federation of consu-

mer organisations (VZBV), and 21,000 more cases are still pending. The amount of compensation, which will begin to be received as of 5 May as agreed, ranges from 1,350 to 6,250 euros, allocating a total of around 620 million.

Catalonia postpones collection of new vehicle tax

The regional government of the Generalitat of Catalonia has approved Decree-law 14/2020 of 28 April, which includes social and tax measures in view of the COVID-19 situation.

It postpones the publication of the provisional and definitive rolls of the CO2 emissions tax on mechanical traction vehicles due in 2019 and 2020, as well as its collection and settlement deadlines. Consequently, the new calendar and provisional roll for the 2019 fiscal year on passenger cars and vans will be published in November, while the publication of the definitive roll will take place in March 2021.

Other: COVID-19 automotive aid

As a result of the situation generated by COVID-19, various governing bodies have developed measures and economic aid to respond to this crisis and the needs it poses. The following are some of the measures approved by the Government that may be of interest to the automotive sector:

Royal Decree-Law 7/2020, of 12 March, adopting urgent measures to respond to the economic impact of COVID-19. Official Journal of Spain no. 65, of 13 March 2020

- **Deferral of tax debts of less than 30,000 euros (overall calculation)**

  For a period of 6 months and without interest on arrears during the first 3 months of the deferral for those declarations-settlements and self-assessments for which the period for submission and payment ends between 13 March and 30 May 2020. The debtor must be a person or entity with a volume of transactions not exceeding 6,010,121.04 euros in 2019.

  This deferral also applies to the following sections provided for in the Tax Act 58/2003 of 17 December: those relating to tax obligations to be met by the withholder or the party obliged to make payments on account, those relating to taxes that must be legally charged unless it is duly justified that the charges charged have not actually been paid and those relating to tax obligations to be met by the party obliged to make payments on account of corporate income tax.

- **Extraordinary postponement of the repayment schedule for loans granted by the General Secretariat for Industry and Small and Medium-Sized Enterprises**

  A deferral of the payment of principal and/or interest for the current annuity will be granted to those beneficiaries of concessions for financial support to industrial projects, which have been rendered inactive by the current crisis, reduction in sales volume or interruptions in supply in the value chain, provided that they submit their application before the end of the payment period in the voluntary period. The application must incorporate certain documentation.

  To be granted, the term must be less than 6 months from the entry into force of this Royal Decree-law 7/2020. Its resolution will take place within a maximum period of one month from the request, and if there is no notification after this period has elapsed, it will be regarded as negative silence.

- **Extension of the scope of the Thomas Cook financing line to cater for all companies established in Spain in certain economic sectors**

  Its financing is extended to those companies and self-employed persons with a registered office in Spain that formalise operations in the "ICO Empresas y Emprendedores" line, whose activity falls under one of the codes of the Spanish Standard Industrial Classification ("CNAE") for the tourism sector, including car and light motor vehicle rental.

Royal Decree-law 8/2020, of 17 March, on urgent extraordinary measures to deal with the economic and social impact of COVID-19. Official Journal of Spain no. 73, of 18 March 2020

Royal Decree-law 8/2020 adds the following measures to the above:

- **Extraordinary contribution measures in relation to the procedures for the suspension of contracts and reduction of working hours due to force majeure related to COVID-19**

  Companies that have carried out procedures for the suspension of contracts and reduction of authorised working hours due to the current crisis are exempt from the payment of the business contribution and the fees for joint collection while the suspension or reduction process is in progress.

  The conditions are that the company must have fewer than 50 employees registered with the social security authorities on 29 February 2020; if there are 50 or more, the exemption from the obligation to pay contributions is 75 % of the company's contribution. The employer must apply to the Social Security Agency, identifying the workers and the period.

- **Line of guarantees for companies and self-employed workers**

  A line has been approved to cover financing granted by financial institutions to companies and the self-employed on behalf of the State through the provision of guarantees to meet their liquidity needs. The maximum amount to be granted by the Ministry of Economic Affairs and Digital Transformation is 100,000 million euros.

  The conditions of the first section of the ICO guarantee line, whose maximum amount is 20 billion euros, are set out in the Schedule to the Resolution of 25 March 2020.

- **Extraordinary line of insurance cover**

  A line of insurance coverage of up to 2 billion euros has been created, charged to the Internationalisation Risk Reserve Fund, for a period of 6 months, with the following characteristics:

  — The working capital credits required by the exporting company are eligible, without the need for a direct relationship with one or more international contracts, provided that they meet new financing needs.

  — Beneficiaries will be Spanish companies regarded as Small and Medium-sized Enterprises as defined in Annex I to EU Regulation 651/2014 of the Commission and larger companies (unlisted) characterised by being internationalised or in the process of internationalisation (in which international business represents at least one third of their turnover; or are regular exporters during the last four years in accordance with the criteria established by the State Secretariat for Trade). In addition, to be a beneficiary they must have a liquidity problem or lack of access to financing due to the crisis.

  — The limit on the percentage of credit risk cover for transactions under this facility may not exceed that stipulated by European legislation. The facility will be implemented in two tranches of 1 billion euros. The Risk Committee is authorised to include within the line of cover all types of commercial transactions, including domestic transactions, whether they involve the supply of goods, the provision of services or other transactions carried out by Spanish companies.

  — Companies in a state of insolvency or pre-insolvency and those with incidents of non-payment with public sector companies or debts to the Public Administration, registered prior to 31 December 2019, are excluded.

- Implementation of **Plan Acelera PYME**

  Through the public business entity RED.ES to articulate a set of initiatives in collaboration with the private sector to support SMEs. With this Plan the SMEs will be able to obtain information

about resources they have at their disposal for their digitalization and to apply teleworking solutions in order to improve the digitalization processes; *financial support measures for the digitalization of the SMEs through the financing of ICO for SMEs the purchase and leasing of equipment and services for the digitalization of SME and teleworking solutions, mobilising in the next two years more than 200 million Euros*.

Royal Decree-law 11/2020, of 31 March, adopting additional urgent measures in the social and economic field to deal with COVID-19. Official Journal of Spain no. 91, of 1 April 2020

Measures in Royal Decree-law 11/2020 of 31 March:

- **Measures to support industrialisation**

  Extension of the deadline for providing guarantees in calls for loans granted by the Secretariat General for Industry and Small and Medium-sized Enterprises ("**SGIPYME**") pending at the time of entry into force of Royal Decree 462/2000 of 14 March until 3 November 2020.

  Articles 13 and 25 relating to the guarantee and payment scheme of Order ICT/859/2019 of 1 August, which establishes the bases for the granting of financial support to industrial Research, Development and Innovation projects in the field of manufacturing industry, are suspended for the 2019 call for proposals insofar as they contradict the provisions of this Royal Decree.

  Beneficiaries of industrial project loans granted by the SGIPYME may request modifications to the repayment schedule for two and a half years from the date of entry into force of Royal Decree 463/2020 of 14 March, provided that they have suffered periods of inactivity due to the current crisis, a reduction in the volume of their sales, or interruptions in supply in the value chain.

  This measure is applied to the SGIPYME programmes of Reindustrialization, Competitiveness of Strategic Industrial Sectors, Competitiveness of the **Automotive Sector,** Reindustrialization and Strengthening of Industrial Competitiveness, Connected Industry 4.0 and R&D&I in the field of manufacturing industry.

- **ICEX España Exportación e Inversiones is authorised to return to companies that have incurred non-recoverable expenses the fees paid for participation in trade fairs, or other activities to promote international trade,** that have been called by the entity and subsequently cancelled or postponed due to the situation. Those companies that were to participate in the international events organized through ICEX's collaborating entities and the collaborating entities themselves may obtain aid for non-recoverable expenses

- **Emprendetur**

  Suspension for one year without prior application for payment of interest and amortization corresponding to loans granted by the State Secretariat for Tourism under the provisions of the orders relating to the EMPRENDETUR R+D+I programme.

- **Flexibility in electricity supply contracts for the self-employed and companies**

  Companies may temporarily suspend or modify their contracts or their supply extensions in order to contract another alternative offer with the marketer with whom they have a current contract without any penalty, and at the end of the state of alarm, within three months, the consumer who has requested the suspension of his supply contract may request its reactivation or again its modification when it has been changed. Within five days, the supply or modification contract shall be reactivated free of charge, with the exception of payments for extension rights for increases in contracted power above the threshold contracted before the start of the state of alarm.

- **Flexibility in natural gas supply contracts**

  Self-employed persons and companies can request from their supplier the modification of the daily contracted flow, the inclusion in a toll scale corresponding to a lower annual consumption or the temporary suspension of the supply contract without penalty in order to adjust to the circumstances of the moment. Once the state of alarm has ended, those who have modified the contract may request the increase of the flow rate or change of toll level of Group 3 without any time limit or cost, or in case of having suspended the access contract, it will be activated within a maximum period of five calendar days also without any cost, unless commissioning has to be done due to a previous closure.

- **Suspension of payment of electricity, natural gas and oil product bills for periods included in the state of alarm**

  This may be requested by points of supply of electrical energy, natural gas, manufactured gases and liquefied petroleum gases by pipeline, owned by self-employed persons and small and medium-sized enterprises as defined in Annex I to Regulation (EU) No. 651/2014 of the European Commission, and must identify the Universal Supply Point Code (CUPS). However, in the event of invoicing being suspended, the applicant may not change the marketing company until the regularisation has been completed.

Royal Decree-law 16/2020, of 28 April, on procedural and organisational measures to address COVID-19 in the area of the Administration of Justice. Official Journal of Spain no. 119, of 29 April 2020

This Royal Decree-law has regulated that the losses of the financial year 2020 will not be taken into account solely for the purpose of determining the concurrence of the winding-up event provided for in Article 363.1 e) of the recast version of the Companies Act (reduction of equity to less than half the amount of capital).

Aid from Regional Governments and Town Councils

The Regions have adopted specific measures regarding the postponement or suspension of the periods for filing and paying self-assessments of taxes managed by them (such as, for example, the Transfer Tax), exemptions from regional taxes (as is the case in Murcia or the Balearic Islands) and even postponements in local taxes in some municipalities, as is the case in Murcia. The deferrals are conditioned by the fact that the deadlines for presentation and payment end within the period of the state of alarm in most cases.

In some municipalities, measures have also been or will be approved in this regard, such as rebates or reductions in Business Tax and/or Real Estate Tax and garbage fees for operators who have been forced to reduce or stop their activity altogether, with certain conditions or deferrals in the payment of municipal taxes during the state of alarm.

We will be happy to provide you with more information on request.

For any questions please contact:

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