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Judgments, rulings and decisions

Spain

Judgment 358/2021, of 7 October 2021, of the Madrid Judicial Review Court no. 33. Quashing of fine issued to vehicle parked without a valid ITV

This judgment sets a precedent by **quashing a fine imposed on a driver for having his vehicle parked on a public road without such vehicle having undergone the periodic technical inspection ('ITV')**, considering that "the punishable wrong is **constituted by the fact of driving**, **not by the failure to submit the vehicle to the ITV** periodically".

The fined individual appealed the Decision of 11 March 2021 of the Traffic Authority (Madrid Head Office), which confirmed – after administrative reconsideration - the imposition of a two hundred-euro fine as a result of the complaint lodged against the appellant's vehicle for being parked on a public road without undergoing the periodic technical inspection as required by road safety regulations.

Specifically, the fine is based on the following (a) on the one hand, infringement of the mandate of Article 10(1) of Royal Decree 2822/1998, of 23 December 1998, approving the General Vehicle Regulations ("**RGV"**), which provides that "vehicles registered or put on the road **must undergo a technical inspection** at one of the Technical Vehicle Inspection Stations authorised for this purpose by the competent body in matters of Industry in **the cases and with the frequency**, requirements and exceptions **provided by the regulation set out in** Schedule I"; (b) this non-compliance led to the assessment of a serious infringement, by virtue of Article 76, o) of Royal Legislative Decree 6/2015, of 30 October, approving the recast version of the Traffic, Motor Vehicles and Road Safety ("**LSV**"), which provides that "**driving** a vehicle that **fails to comply with the technical conditions established by regulations**, unless it is classified as very serious, as **well as infringements relating to the rules governing the technical inspection of vehicles**"; (c) and – finally – the sanctioning authority concludes its reasoning on the regulations governing the technical inspection of vehicles, Royal Decree 2042/1994 (repealed by Royal Decree 920/2017, of 23 October, regulating the technical inspection of vehicles) as this lays down the obligation to submit vehicles to technical inspection.

To that end, the sanctioned individual seeks in his appeal a declaration that that sanction is void, on the ground that the sanctioned vehicle was not being 'driven', but was parked, and therefore considers that that sanction would be unlawful because it infringes the principle of (administrative) legality.

Considering the above, the Court includes the following reasoning in its decision: "In this case, **the infringement to be sanctioned** is that provided for in Article 76 (o) LSV and is **constituted by the fact of driving, not by the failure to submit the vehicle to the ITV periodically**, since **no infringement is defined** in Article 10(1) RGV, **which** actually **imposes the obligation of periodic inspection, which** does not mean that it is describing any infringing conduct; another question is the consequences

and liability that may be incurred by those who contravene the duty imposed".

Consequently, the Court understands that as the vehicle was not being driven, the class of infringement would not be applicable, and therefore goes on to allow the appeal of the individual and to quash the fine imposed by the Traffic Authority (Madrid Head Office).

Europe

Joined Cases C-33/20, C-155/20 and C-187/20: Judgment of the Court (Sixth Chamber) of 9 September 2021 (references for a preliminary ruling from the Landgericht Ravensburg - Germany) - UK v Volkswagen Bank GmbH (C-33/20), RT, SV, BC v Volkswagen Bank GmbH, Skoda Bank, a branch of Volkswagen Bank GmbH (C-155/20), JL, DT v BMW Bank GmbH, Volkswagen Bank GmbH (C-187/20). Joined Cases C-33/20, C-155/20 and C-187/20 concerning the interpretation of Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers

This judgment is a preliminary ruling on the questions referred by the *Landgericht Ravensburg* (Ravensburg Regional Court) concerning the interpretation of the obligations under Articles 10(2) and 14(1) of the Consumer Credit Directive 2008/48 (the "**2008/48 Directive**"), i.e. concerning the information to be included in consumer credit agreements and the conditions available to consumers for the exercise of the right of withdrawal.

On the one hand, with regard to the information that must necessarily be included in consumer credit agreements, the Court of Justice of the European Union ("**CJEU**") states that the requirements relating to the type of credit, the term of the credit agreement and the means of payment of linked credit agreements must be interpreted as specifying clearly and concisely that, where such an agreement is a 'linked credit agreement', the agreement itself must expressly state that concept.

Secondly, the CJEU states that "linked credit agreements" should be understood as those in which the financing agreement serves as a means of financing an agreement relating to the supply of a good, where it is stipulated that the amount of credit is to be paid to the seller of the good, and in respect of which the consumer is released from his obligation to pay the sale price to the extent of the amount disbursed, and if the sale price has been paid in full, the seller must deliver the purchased good.

Furthermore, the questions referred for a preliminary ruling question the interpretation to be given to Directive 2008/48 in relation to the "interest rate applicable in the case of late payments as applicable at the time of the conclusion of the credit agreement and the arrangements for its adjustment"; the CJEU held that it must be interpreted as meaning that, in cases where the contract allows for an adjustment of such interest, the contract must include sufficiently clear instructions (for an average consumer without financial knowledge) for calculating the adjustments, taking into account only the wording of the contract. In this respect, the contract should specify, in the form of a specific percentage, the rate of late-payment interest applicable at the time of conclusion of the contract and should describe in a concrete manner the arrangements for adjusting the rate of late-payment interest. Where the parties to the credit agreement in question have agreed that the rate of late-payment interest

is to be adjusted according to the change in the base rate of interest set by the central bank of a Member State and published in an official journal which is easily accessible, the reference in the agreement to that base rate is sufficient, provided that the method for calculating the rate of late-payment interest on the basis of the base rate of interest is set out in the credit agreement. In that regard, two conditions must be satisfied. First, the way in which that calculation method is presented must be easily understandable for an average consumer who does not have specialised financial knowledge and must enable him to calculate the rate of late-payment interest on the basis of the information provided in the credit agreement itself. Secondly, the frequency of the change in the basic interest rate, as determined by national provisions, should also be stated in the contract.

On the other hand, with regard to the "the right of early repayment, the procedure for early repayment, as well as, where applicable, information concerning the creditor's right to compensation", the CJEU states that Directive 2008/48 must be interpreted as meaning that, if these terms are included in the agreement, the agreement must be sufficiently clear to an average consumer.

Finally, with regard to the information requirements set out in Directive 2008/48, the CJEU states that the Directive must be interpreted as not obliging lenders to explicitly mention all the legal situations provided for in the domestic legislation, which allow the consumer to terminate the contract.

With regard to the consumer's right of withdrawal, the CJEU states that Directive 2008/48 must be interpreted as meaning that creditors may not rely on prescription, or abuse in the exercise of that right, in cases where the credit agreement does not include the mandatory information requirements set out in Article 10 of Directive 2008/48.

Finally, in the event that the credit agreement incorporates alternative methods of dispute resolution, the CJEU states that the credit agreement must provide essential information on all out-of-court complaint or redress mechanisms available to the consumer and, where appropriate, the costs of using them. These provisions are not to be understood as being fulfilled by a mere reference to an internet link with information, but must be specifically set out in the contract.

Judgment of the Court (Grand Chamber) of 6 October 2021 (reference for a preliminary ruling from the Audiencia Provincial de Barcelona) - Sumal, SL v Mercedes Benz Trucks España, SL - Case C-882/19 (Reference for a preliminary ruling – Competition – Compensation for harm caused by a practice prohibited under Article 101(1) TFEU – Determination of the undertakings liable to provide compensation – Action for compensation directed against the subsidiary of a parent company and brought following a decision finding only that the parent company participated in a cartel – Concept of an 'undertaking' – Concept of 'economic unit')

By means of this decision, the CJEU addresses a relevant question referred for a preliminary ruling by the Audiencia Provincial de Barcelona in relation to the standing to be sued in tort claims deriving from the European Commission's Decision of 19 July 2016 (the "**Decision**"), which sanctioned several truck manufacturers for collusive arrangements on pricing and gross price increases for those trucks.

In relation to the aforementioned Decision, the Spanish company SUMAL, S.L. brought an action before the Barcelona Companies Court, seeking to obtain from the Spanish subsidiary of the Mercedes Group damages as compensation for the overcharging of the vehicles it had purchased. The court of first instance, in Judgment no. 981/2019, of 23 January 2019, rejected this action, establishing that in order to assess the liability of the subsidiary of the sanctioned company, it is necessary for there to be a terminological unity between the concept of "infringer" and "liable for loss and damage caused", as a judgement of identification that must - necessarily - be limited to one of the legal persons sanctioned by the aforementioned Decision. The original claimant therefore appealed against that decision before the Audiencia Provincial de Barcelona, which raised - as a matter referred for a preliminary ruling - the questions set out below:

(1) Does the doctrine of the single economic unit developed by the [Court] itself provide grounds for extending liability from the parent company to the subsidiary, or does the doctrine apply solely in order to extend liability from subsidiaries to the parent company?

(2) In the context of intra-group relationships, should the concept of single economic unit be extended solely on the basis of issues of control, or can it also be extended on the basis of other criteria, including the possibility that the subsidiary may have benefited from the infringing acts?

(3) If it is possible to extend liability from the parent company to the subsidiary, what would be required in order for it to be possible?

(4) If the answers to the earlier questions support the extension of subsidiaries' liability to cover acts of the parent company, would a provision of national law such as Article 71(2) of the [Law on the Protection of Competition], which provides only for liability incurred by the subsidiary to be extended to the parent company, and then only where the parent company exercises control over the subsidiary, be compatible with that line of the Court's case-law?"

In the light of this, the Gran Chamber replies: on the one hand, it establishes that "(...) the victim of an anticompetitive practice by an undertaking may bring an action for damages, **without distinction, either against a parent company which has been punished by the Commission** for that practice in a decision **or against a subsidiary of that company which is not referred to in that decision, where those companies together constitute a single economic unit**".

However, the CJEU qualifies this statement by setting out the conditions governing the rights of defence of the subsidiary concerned, stating that "company concerned must be able effectively to rely on its rights of the defence in order to **show that it does not belong to that undertaking** and, where no decision has been adopted by the Commission under Article 101 TFEU, **it is also entitled to dispute the very existence of the conduct alleged to amount to an infringement**".

Finally, the CJEU concludes its reply to the Barcelona Provincial Court by stating that the interpretation of Community legislation (in particular, Article 101(1) of the Treaty on the Functioning of the European Union ["**TFEU**"]), "precludes a national regulation which provides for the possibility of imputing liability for conduct of a company to another company only in circumstances where the second company controls the first".

Legislation

Spain

Royal Decree 785/2021, of 7 September, on the control of the operation of licences authorising the hiring of passenger service vehicles

The adoption of this Royal Decree is brought about by the quashing of the requirement to communicate telematically to the authorities certain data relating to **the hiring of passenger service vehicles** provided for in Royal Decree 1076/2017; such quashing was effected by the Supreme Court Judgments numbers 332/2020 and 249/2020, which considered the required data communication to be disproportionate and contrary to law insofar as it includes the personal data of users, information that is irrelevant for the purpose pursued, creating a database that allows establishing patterns of behaviour in relation to the mobility and use of this urban transport service of perfectly identified natural persons. In this regard, the legislator takes this into account and proceeds to establish the measures for controlling the provision of passenger service vehicles, indicating the data that must be communicated electronically to the authorities for these purposes, so that data referring to the users of passenger service vehicles are excluded. However, the data that allow verification that the passenger service vehicles have been previously contracted in compliance with the legislation in force should be communicated. This is why it is necessary to have the identification data of the hire company and the contract.

Likewise, details of the intermediaries are required so as to verify that they are duly authorised to act as such, given that intermediation in the contracting of public transport services without complying with the necessary requirements constitutes a very serious administrative infringement in accordance with the provisions of Article 140(16) of the Land Transport Act, as well as contracting with unauthorised operators, by virtue of the provisions of Articles 140(17) of said Act and 197(18) of its regulations.

In the case of contracts, the place, date and time of conclusion, the place, date and time at which the service is to start and the registration number of the vehicle are required in order to verify that they have been concluded before and with the advance notice required by the applicable rules. With the requirement of the place and date on which the service is to end, the aim is also to check whether the service is urban or interurban, as the regulations to which it will be subject in one case or the other may be different in accordance with the provisions of Royal Decree-law 13/2018, of 28 September, amending the Land Transport Act.

On the other hand, it has also been taken into account that some passenger service vehicles are contracted by companies, authorities and individuals to provide a specific person or persons with the services they require for a certain period of time. In these cases it is impossible for the hiring company to know in advance the place of termination of the service. For this reason, it is provided that the identification of the place of termination of the service can be omitted provided that it is expressly contracted that it will be freely determined by the client during the provision of the service.

For all these reasons:

a) The first article, called control measures, lays down the obligation attributed to the holders of authorisations for the hiring of passenger service vehicles, before the start of each hiring, to communicate telematically to the authorisation, (i) the name and tax identification number of the hire company; (ii) the name and tax identification number of the intermediary; (iii) the place, date and time of conclusion of the contract; (iv) the place, date and time of commencement and termination of the service (the end may be omitted if the contract stipulates that it is freely determinable by the parties); (v) the registration number of the vehicle; and (vi) the route taken if the service begins and ends at the same point.

b) The Directorate-General for Land Transport shall put into operation and determine the criteria for the use of a Register of Passenger Service Vehicle Hiring Communications.

c) Holders of authorisations for the hiring of passenger service vehicles shall send the authority the communications referred to in Article 1 of this Royal Decree once the computer application for managing the register of such communications is operational, which shall be announced by the Directorate-General for Land Transport within three months of its entry into force.

d) The Second Transitional Provision establishes the validity (until the creation of the aforementioned Register) of Articles 23 and 24 of Order FOM/36/2008, of 9 January, implementing the second section of Chapter IV of Title V, regarding the hiring of passenger service vehicles, of the Land Transport Regulations, approved by Royal Decree 1211/1990, of 28 September, laying down the obligation to (i) formalise the hire contract prior to providing the service and (ii) fill in a roadmap for each service.

e) Finally, the Sole Repealing Provision repeals Royal Decree 1076/2017 and the aforementioned Articles 23 and 24 of Order FOM/36/2008.

Amendment of Order SND/413/2020, of 15 May, setting out special measures for the technical inspection of vehicles, by virtue of the Judgment of 19 October 2021, of the Third Division of the Supreme Court, upholding the application for judicial review number 204/2020, lodged by the National Federation of Transport Associations of Spain (FENADISMER)

Order SND/413/2020, of 15 May, extended the extension of the validity of the periodic technical inspection certificate for vehicles, although its second section stipulated that, once the technical inspections whose certificates had been automatically extended had been carried out, as regards filling in the date until which the inspection is valid on the ITV cards and their certificates, the date to be taken as a reference was the date stated on the ITV card itself, without the extension of the certificates being taken into account.

In this respect, FENADISMER made an application for judicial review in respect of the second paragraph of the aforementioned Order, requesting its voidance, which was upheld by the Third Chamber (Fourth Division) of the Supreme Court on 19 October 2021.

Royal Decree 933/2021, of 26 October, laying down the documentary registration and information obligations of natural or legal persons who carry out accommodation and motor vehicle rental activities

The purpose of this Royal Decree is to set out the information requirements that, among others, the following persons must observe before initiating the provision of such services, for the safeguarding of Public Safety, in the terms provided for in Article 25(1) of Public Safety Protection Act 4/2015 of 30 March.

This Royal Decree affects, for the purposes of the automotive sector, the following:

- The business activity of digital platforms engaged, with or without consideration, in intermediation in motor vehicle rental activities through the Internet, whether or not they provide the underlying service that is the subject matter of mediation, provided that they offer services in Spain.

- Vehicle rental activities without the services of a driver: those carried out for the purpose of facilitating vehicle use by a third party, for a specific period of time, and in exchange for compensation, consideration or a certain price. In any case, the following activities are included in this definition:

  a) Those carried out by companies specifically engaged in vehicle rentals.

  b) Tour operators providing intermediation services between car rental companies and consumers.

  c) The business activity of digital platforms engaged, with or without consideration, in intermediation in motor vehicle rental activities through the Internet, whether or not they provide the underlying service that is the subject matter of mediation, provided that they offer services in Spain.

The rental of auto-taxi vehicles and, in general, the hiring of passenger service vehicles is excluded from the provisions of this paragraph.

The natural or legal persons who carry out or intermediate in the performance of the aforementioned activities shall be obliged to keep a documentary record (for a period of three years from the end of the service) and to communicate to the relevant authorities the information provided for in Schedule II to the aforementioned Royal Decree, with regard to the users of such services, this being:

- In respect of the vehicle **rental company**: (a) NIF (tax identification number); (b) company name; (c) full address; (d) landline and/or mobile phone number; (e) company website; and (f) e-mail address.

- In respect of the **hirer of** the vehicle: (a) full name, sex, identity card and nationality; (b) usual place of residence (specifying full address); (c) contact telephone number (landline and mobile) and (d) e-mail address.

- For the **main driver** (and, if applicable, the co-driver): (a) full name, sex, identity card, nationality and date of birth; (b) place of permanent residence (specifying full address); (c) contact telephone number; (d) e-mail address; and (e) driving licence (specifying type, validity, number and holder number).

- Finally, the operators of the activity must document the **details of the transaction**,

these being: (a) the contract data (date, place and signatures of the parties to the contract); (b) the contract performance data (place and date of collection and return of the vehicle); (c) the vehicle data (make, model, registration number, colour, type, mileage at collection and delivery, GPS data -if applicable-; and finally (d) the data of payment used by the hirer (i.e. method of payment used, holder of such method, expiry date of the card and the date of payment).

This communication shall be made immediately, and in any case within a period not exceeding 24 hours, respectively, as of:

a) Making the reservation or formalising the contract or, where applicable, its cancellation.

b) The start of the contracted services.

The planned communications will be carried out by telematic procedures.

The system of penalties for infringements of the provisions of this Royal Decree by obliged parties shall be governed by the provisions of Chapter V of the Public Safety Protection Act 4/2015 of 30 March.

(i) The following shall be considered serious infringements, in relation to Article 36(20) of Act 4/2015 of 30 March:

a) Lack of the documentary records provided for in this Royal Decree.

b) Failure to make mandatory disclosures.

(ii) The following shall be considered minor infringements, in relation to Article 37(9) of Act 4/2015 of 30 March:

a) Irregularities or deficiencies in the completion of the records provided for in this Royal Decree.

b) Late completion of the compulsory communications.

Liability for infringements committed shall lie directly with the parties who are the perpetrators of the act of infringement.

This Royal Decree will enter into force six months after its publication in the Official Journal of Spain. However, the provisions relating to the reporting obligations will take effect from 2 January 2023.

Royal Decree-law 24/2021, of 2 November, on the transposition of European Union directives in the areas of covered bonds, cross-border distribution of collective investment undertakings, open data and re-use of public sector information, exercise of copyright and related rights applicable to certain online transmissions and to radio and television broadcasts, temporary exemptions for certain imports and supplies, for consumers and for the promotion of clean and energy-efficient road transport vehicles

The seventh book of this legislation transposes Directive (EU) 2019/1161 of the European Parliament and of the Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy efficient road transport vehicles, and incorporates the principles that will govern public procurement procedures for the purchase of road vehicles, as well as the procurement of public passenger transport services by road. In particular, this regulation sets out the objectives and requirements to be met

by the vehicles that are the subject matter of public procurement, namely:

a) On the one hand, from 2 August 2021 to 31 December 2025, 36.3% of all light-duty vehicles in categories M1, M2 and N1 must have emissions of a maximum of 50 grams of CO_2 per kilometre. From 1 January 2026, such vehicles must have emissions of 0 grams per kilometre.

b) As far as heavy-duty vehicles are concerned, for N2 and N3 vehicles, from 2 August 2021 to 31 December 2025, 10% of the total number of vehicles awarded must be "clean vehicles" (meaning vehicles that use propulsion modes that make use of fuel substitutes for oil, including CNG, LNG and LPG) and from 1 January 2026 14% must be "clean vehicles" and from 1 January 2026, 14%. Finally, for M3 category vehicles from 2 August 2021 to 31 December 2025, 45% of these must be "clean vehicles" and from 1 January 2026, 65%.

Order TED/1427/2021, of 17 December, approving the regulatory bases for the incentive programme for light vehicle fleet electrification projects (MOVES FLOTAS Programme), within the framework of the Recovery, Transformation and Resilience Plan

This piece of legislation lays the foundations for aid and incentives, on a competitive basis, for the electrification of company fleets of light vehicles, including not only the acquisition of electric vehicles (to replace combustion vehicles) but also the installation of vehicle charging infrastructure, as well as the acquisition or adaptation of fleet management systems (for, among others, the digitisation of route control) and the encouragement of training for company staff in the electrification of their mobile part.

This incentive programme will be endowed with an initial budget of 50 million euros and will be financed by the Recovery and Resilience Mechanism, as this programme is part of Component 1, Investment 2 of the PRTR (the State Register of Emissions and Pollutant Sources).

Projects related to the actions listed in Schedule I, which lead to a reduction of final energy consumption and as a consequence to a reduced energy dependence on oil and a reduction of CO_2 emissions, shall be eligible for support.

Aid under the incentive programme approved by this Order shall be incompatible with other subsidies or grants that may be given for the same purpose, from any national, European Union (**"EU"**) or international authorities or public or private bodies.

The main features of the bases laid down by this Order are summarised in the following points:

a) All legal persons (irrespective of their size) carrying out the incentive actions (as described in b) below), with the exception of vehicle dealers and sales outlets, may be beneficiaries of this aid package.

b) In accordance with Schedule I to the aforementioned piece of legislation, the following actions are eligible for incentives: "Action 1" the acquisition of electric or fuel cell vehicles, "Action 2" the installation of recharging points and "Action 3" the transformation of current fleets for electrification.

With regard to the first of these actions, the following requirements are laid down in order for them to be considered as activities eligible for incentives:

- Incentives will be provided for the purchase of **new electric and fuel cell vehicles, registered for the first time in the name of the beneficiary**, either through direct purchase, finance leases or operating leases (in the latter case, the vehicle may be registered in the name of the company providing the service in order to be eligible for such aid).

- The purchase of electric and fuel cell vehicles of categories M1, N1, L3e, L4e and L5e with a maximum age to be established in the call for applications, counted from their first registration in Spain until the date of entry of the application, provided that the vehicle has not been the subject of previous aid by the previous owner or owners, will also be eligible for subsidy.

- Vehicles must operate in more than one devolved region ('Autonomous Community') and may not be assigned to a particular territory.

- The number of vehicles and the amount of aid for such renewal shall be fixed in the different calls for proposals.

- With regard to vehicle typology, it is established that no incentive will be given for the purchase of M1 and N1 category vehicles whose emissions exceed 50 gCO_2/km and L category vehicles whose emissions are higher than 0 gCO_2/km.

- In view of the above, incentives shall be provided for the purchase of M1, N1, light and heavy quadricycles, motorbikes and mopeds that are: (a) pure electric (BEV); (b) extended range electric (EREV); (c) plug-in hybrid (PHEV); (d) fuel cell electric (FCV); and (e) fuel cell hybrid electric (FCHV).

The following items will be considered eligible costs: the additional cost of purchasing electric vehicles over combustion vehicles, the preparation of the technical projects related to the actions, the costs of project management, the costs of carrying out the civil works, provided that they do not exceed 20 % of the eligible investment, and the costs of assembling the installations, where applicable; the necessary ancillary equipment, materials and facilities, as well as software programmes. The costs of managing the application and justification of the aid will also be eligible, up to a maximum limit of 10,000 euros.

With regard to Action 2, and as long as the purchase of a vehicle of one of the above-mentioned types is included in the respective applications, aid may also be requested for the **installation of** vehicle **recharging points**; such aid includes the costs of engineering and project management, the cost of the infrastructure itself, the installation (or updating) of its electrical elements and the costs of the associated permits to carry out said installation.

Finally, with respect to Action 3 (and also, to the extent that the acquisition of a vehicle with the aforementioned characteristics is requested), the following will be eligible for aid under this plan: (i) the costs of acquisition and implementation of the fleet management system or adaptation of the same, which allows the digitisation of the control and location of routes; and (ii) the cost of providing training courses for efficient driving of electric fleets.

c) With regard to the amount of aid, this regulation establishes that it will have to comply with the provisions of each of the calls for applications, but establishes as a basis

Motorisation	Category	Range in electric operation mode (km)	Vehicle selling price limit (EUR) before VAT or GST	Aid (EUR)			
				No scrapping		With scrapping	
				SME	Large Company	SME	Large Company
Fuel cell (FCV, FCHV)	M1	-	-	2.900	2.200	4.000	3.000
PHEV, EREV, BEV		Greater than or equal to 30 and less than 90	45,000 (53,000 for 8 or 9-seater BEVs)	1.700	1.600	2.300	2.200
		Greater than or equal to 90		2.900	2.200	4.000	3.000
PHEV, EREV, BEV, Fuel Cell	N1	Greater than or equal to 30	-	3.600	2.900	5.000	4.000
	L6e	-		800	600	1.000	800
	L7e			1.200	1.000	1.500	1.200
	L3e, L4e, L5e with P ≥ 3kW	Greater than or equal to 70	10.000	750	700	950	900
	L1e, l2e	Greater than or equal to 60	6.000	250	200	300	230

that for Action 1, the amount of aid varies according to the type of beneficiary, the type of vehicle and its motorisation and whether another vehicle is scrapped, and details the corresponding amounts in the table below.

For Actions 2 and 3, the aid intensity is 40 % of the eligible costs, which may be increased by 10 percentage points in the case of aid given to medium-sized enterprises and by 20 percentage points in the case of aid given to micro or small enterprises.

Royal Decree-law 29/2021, of 21 December, adopting urgent measures in the energy field to promote electric mobility, self-consumption and the deployment of renewable energy

This Royal Decree-law, with the aim of stimulating the decarbonisation of the economy, contains a series of provisions relating to the promotion of electricity self-consumption, the deployment of renewable energy and electric mobility. As far as the automotive sector is concerned, it is worth highlighting this last point, which leads to the incorporation of the points indicated below:

a) Firstly, Article 28(2) of the Roads Act 37/2015 of 29 September, which regulates road protection zones, is amended, firstly establishing the prohibition to carry out works or installations in such zones, requiring authorisation from the Ministry of Transport, Mobility and Urban Agenda. To this end, the regulation establishes the power of this ministry to authorise the construction of recharging points as long as they can be easily dismantled.

b) On the other hand, in relation to the construction of recharging points in concessions on state road networks, it is established that road concessionaires that include fuel supply stations will be subject to the following obligations: (i) those stations whose sales

volume of petrol and diesel A (as of 2019) is equal to or greater than 10 million euros, must install an electric recharging point with a power (equal to or greater than) 150 kW in direct current. (ii) If the turnover of such facilities (for the same reporting period) is between EUR 5 million and EUR 10 million, the power of the recharging points shall be not less than 50 kW DC. (iii) In the event that in a province or Autonomous Community of reference there is no fuel supply station that falls within one of the aforementioned thresholds, those stations that account for 10% or more of the sales volume in that territory must install a recharging point with a DC power output of 50 kW or more. Finally (iv) those service station owners who intend to undertake a refurbishment must, without prejudice to their level of sales, install a recharging point with a DC power output equal to or greater than 50 kW.

c) Likewise, this piece of legislation incorporates a new paragraph under Article 48 of the Electricity Sector Act 24/2013 of 26 December, stating that for the construction of an electrical facility it will not be necessary to seek administrative authorisation (except in cases where these may affect facilities or buildings with cultural or historical heritage value), with a mere statement of compliance being sufficient for this purpose, which will allow the applicant to begin construction work from the same day of the application.

d) Finally, it establishes the minimum number of electric vehicle charging stations in car parks attached to buildings other than residential buildings or existing car parks not attached to buildings, providing that - no later than 1 January 2023 - all buildings other than private residential buildings that have a parking area with more than twenty parking spaces must have the following charging stations: (i) one recharging station for every 40 parking spaces or fraction thereof, up to 1,000 spaces, and one more recharging station for every additional 100 spaces or fraction thereof; (ii) in buildings owned by the National Administration or public bodies linked to it or dependent on it, one recharging station shall be installed for every 20 parking spaces or fraction thereof, up to 500 spaces, and one more recharging station for every additional 100 spaces or fraction thereof. However, the above is qualified by excluding from these obligations buildings that are officially protected because they are part of a designated conservation area or because of their special architectural or historic interest, insofar as compliance with the requirement could unacceptably alter their character or appearance, as determined by the competent heritage protection authority.

Order ICT/1466/2021, of 23 December, laying down the regulatory bases for the granting of aid for comprehensive actions in the industrial chain of the electric and connected vehicle within the Strategic Project for Economic Recovery and Transformation in the Electric and Connected Vehicle sector (PERTE VEC), within the framework of the Recovery, Transformation and Resilience Plan

In order to transform and boost different sectors of the Spanish economy, last June the government enacted the Strategic Projects for Economic Recovery and Transformation. To this end, considering the considerable weight of the automotive industry in the Spanish gross domestic product, the Executive decided to include this industrial sector within its stimulus

programmes and, with the aim of also reorienting its activity to environmental and decarbonisation objectives, it is promoting the Strategic Project for Economic Recovery and Transformation in the Electric and Connected Vehicle sector.

In view of this, this piece of legislation lays the foundations for the granting of aid for the achievement of comprehensive actions in the industrial chain of electric and connected vehicles, the main characteristics of which are summarised below:

a) The aid provided for in this Order may be granted to groups without legal personality that have previously established a grouping agreement, provided that they meet the following requirements:

- The grouping must be made up of companies incorporated in Spain that have internally signed an internal agreement that regulates the functioning of the grouping; the grouping must be established in a geographical area that covers at least two Autonomous Communities. The aforementioned internal agreement shall include at least the following points:

  — Commitments to implement activities undertaken by each member entity of the partnership.

  — Budget for the activities undertaken by each member of the grouping, and the amount of aid (subsidies and loans) to be applied in each case.

  — Sole representative or authorised representative of the grouping, with sufficient powers to fulfil the obligations incumbent on the grouping as applicant.

  — Internal organisation of the grouping, contingency plan and arrangements for the resolution of internal disputes.

  — Liability, indemnity and confidentiality agreements between participants.

  — Ownership of results.

  — Legal protection of the results and, where appropriate, of the resulting intellectual property.

  — Rules for dissemination, use and access rights to the results of the funded activity.

  — Rules for the winding up of the grouping.

- Such a grouping must be made up of at least five separate companies (not belonging to the same business group) and be active in the automotive industry.

- Of the entities forming part of the grouping, at least one of them shall belong to CNAE 291 (Manufacture of motor vehicles), and another shall belong to CNAE 293 (Manufacture of components, parts and accessories for motor vehicles).

- The grouping must be made up of at least 40% of participating SMEs and must have the collaboration of at least one technology and/or knowledge provider and, as such, must have sufficient technical and organisational capacity

to carry out the R&D&I activities included in the tractor project.

- In addition, within the business grouping, each of the companies will play one of the following roles:

  — Industrial developer.

  — Technology and/or knowledge provider: understood as entities providing the knowledge and/or technology necessary to carry out some part of the proposal involving more than one industrial developer.

  — Interlocutor with the authorities.

b) This aid scheme will focus on supporting the electric vehicle value chain, for which purpose this piece of legislation distinguishes the building blocks necessary to achieve the objectives of the PERTE VEC:

1. On the one hand, the mandatory industrial blocks, which are essential to achieve the objective of the PERTE VEC, being these: (*x*) on the one hand, the manufacture of original equipment and assembly; (*y*) on the other hand, the manufacture of batteries or hydrogen cells; and (*z*) the manufacture of other essential components adapted to the electric and connected vehicle.

2. On the other hand, the additional blocks, complementary to the mandatory ones, correspond to: (*x*) the manufacture of intelligent vehicle components; (*y*) the development of work relating to electric vehicle connectivity; and (*z*) the manufacture of charging systems.

3. Finally, the mandatory cross-cutting blocks, which are (x) the Circular Economy Plan; (y) the Digitalisation Plan; and (z) the Professional Training and Retraining Plan: (*x*) the Circular Economy Plan; (*y*) the Digitalisation Plan; and (*z*) the Training and Professional Retraining Plan.

Thus, applicants for aid will present a tractor project made up of one or more projects detailed in the previous blocks, and within each tractor project, those projects that fall within one of the following lines of action will be eligible for aid:

- **R&D&I lines**, consisting of industrial research projects, experimental development projects and innovation projects in terms of organisation and processes, in accordance with the following definitions provided for in these regulations.

  — **Industrial research projects** are to be understood as any planned research or critical studies aimed at acquiring new knowledge and skills that may be useful for the development of new products, services or allow for the significant improvement of existing ones.

  — **Experimental development projects** shall mean the acquisition, combination, configuration and use of existing scientific, technological, business or other knowledge and skills for the purpose of developing plans, structures or designs for new, modified or improved products, processes or services. Such experimental development projects may include prototyping, piloting, testing and validation of products, services or processes. However, routine or periodic modifications to be made to products, services or processes are excluded from this category.

— **Organisational innovation projects** will be those that incorporate the application of a new organisational method to business practices, workplace organisation or external relations. However, changes to methods already in use, changes in management strategy, structural modifications of the company, or changes in the costs of production factors are excluded.

— **Process innovation projects** shall mean any implementation of a new (or improved) method of production or supply, excluding minor changes or improvements, or increases in production capacities using systems similar to pre-existing ones.

- **Lines of innovation in sustainability and energy efficiency**, which are subdivided into two subcategories:

  — **Investments with an innovative character aimed at environmental protection**, which shall have one of the following characteristics: (i) being investments that enable the entity to increase its level of environmental protection arising from its activities beyond EU standards; or (ii) being investments that enable the entity to increase the level of environmental protection arising from its activities in the absence of EU standards. In any case, activities that have already been enacted within the EU, but are not in force, would be excluded from this category.

  — **Innovative investments in energy saving or energy efficiency measures**, understood as those investments aimed at improvements that enable a higher level of energy efficiency to be achieved in the entity's production processes. Investments aimed at bringing the entity into line with EU regulations will not be included in this category.

- **Regional investment aid lines**, which are characterised as aid for the type of projects detailed below, granted to areas that meet the requirements laid down in Article 107(3)(a) TFEU (i.e. areas that have received aid to promote their economic development). These areas will be eligible for aid for the following primary projects (which must, in any case, be carried out by a single entity and in a single location):

  — Setting-up of a new establishment: Start of a new industrial activity in such assisted areas.

  — Modification of production lines: Investments made for:

    - The expansion of the capacity of an existing establishment;

    - Diversification of production in an establishment into products that were not previously produced in the establishment; or

  — The fundamental transformation in the overall production process of the establishment.

In addition, in assisted areas receiving aid to facilitate the development of certain activities where such aid does not adversely affect trading conditions and competition

within the EU, aid may be given to SMEs for the following types of primary project (which will in all cases be carried out by a single entity within the cluster and in a single location):

— Setting-up of a new establishment: Start of a new industrial activity in such assisted areas;

— Modification of production lines; consisting of investments in apparatus and equipment, as well as the acquisition of tangible fixed assets for the implementation of solutions for the hybridisation of the physical and digital world integrating at least one complete production line, aimed at:

  - The expansion of the capacity of an existing establishment;
  - Diversification of production in an establishment into products that were not previously produced in the establishment; or
  - The fundamental transformation in the overall production process of the establishment.

  Finally, in assisted areas (in accordance with Article 107(3)(c) of the TFEU), aid may be given to large enterprises for the following types of primary project (which will in any event be carried out by a single entity within the cluster and in a single location):

  — Setting-up of a new establishment: Start of a new industrial activity in such assisted areas; and

  — Initial investments in favour of a new economic activity.

  The cluster entity benefiting from aid under this line must confirm in the documentation submitted with the application that it has not moved to the establishment where the initial investment for which aid is sought has taken place in the two years preceding the application for aid and undertake not to do so for a period of two years after the initial investment for which aid is sought has been completed.

  - **Training aid**, understood as primary projects within the aforementioned cross-sectoral training block and linked to the Comprehensive Training Plan in management skills, digitalisation and generation of innovative ecosystems in the electric and connected vehicle value chain linked to specific training centres in the sector. Actions that companies provide in order to comply with mandatory national training rules will be excluded from such aid.

  Likewise, the regulation itself establishes the scope that each of the referred blocks that characterise the PERTE VEC must have, referring to the following points: (i) manufacture of original equipment and assembly; (ii) manufacture of batteries and hydrogen cells; (iii) manufacture of components adapted to the electric and connected vehicle; (iv) manufacture of components of the intelligent electric vehicle; (v) work related to recharging systems; (vi) Circular economy; (vii) digitalisation; and (viii) training.

c) Another characteristic feature of the PERTE-VEC is that it is required to have an incentive character, which means that such aid will only be applicable if the application is processed before the start of work on the tractor project, where 'start of work' means either the start of construction work on the investment or

the first firm commitment for the order of equipment or other commitment making the investment irreversible, if this date is earlier; the purchase of land and preparatory work such as obtaining permits and conducting pre-feasibility studies are not considered to be the start of work; in the case of transfers, 'start of work' is the time at which the assets directly linked to the acquired establishment are acquired.

d) This aid plan has a budget allocation of 2,975 million euros from the EU Next Generation funds, structured as 1,425 million euros in the form of loans and 1,550 million euros in the form of subsidies. The time limit for such aid is set at 2023, with a completion period of 30 September 2025.

e) Aid under this plan will be awarded on a competitive basis, in accordance with Article 22.1 of Law 38/2003, of 17 November, General Subsidies Act, i.e. "by comparing the applications submitted, in order to establish a priority among them in accordance with the assessment criteria previously established in the regulatory bases and in the call for applications, and to award, with the limit set in the call for applications within the available credit, those that have obtained the highest score in application of the aforementioned criteria".

f) In cases where EERP-VEC aid takes the form of loans, the loans shall have the following characteristics:

- Its amount will be the result of applying the limits (detailed in section (g) below). In addition, the nominal amount shall be limited in accordance with the institution's cumulative outstanding exposure to the Directorate-General for Industry and Small and Medium-sized Enterprises, which may not exceed five times the institution's own funds in the last financial year for which the accounts have been closed.

- The repayment period will be 10 years with a three-year grace period.

- The applicable interest rate will be established in each call for applications, being - in any case - equal to or higher than the 1-year Euribor.

- The cancellation method shall be as follows: the repayments of principal shall be annual and equal in amount, and shall be paid at the end of the grace period. Interest shall be paid annually from the date of delivery of the principal and shall be paid annually together with, where applicable, the repayment instalment at the end of each period. The interest for each period will be calculated on the outstanding capital at the beginning of the period and will accrue from the date of delivery of the principal, this being understood as the date on which the Public Treasury transfers the amount granted to the beneficiary entity.

On the other hand, where aid is provided through a combination of a loan and a subsidy, the loans will have the same characteristics as above, but their amount will also be limited by the ceilings (detailed in paragraph (g) below), taking into account, for the purpose of calculating the aid intensity, the subsidy to be awarded.

Those beneficiary entities that wish to make a payment on account or an early repayment of the loan must initiate the corresponding procedure by submitting an application at

Types of projects	Minimum percentage of the budget to be financed in the form of loans		
	Non-SMEs	Medium-sized companies	Small and micro enterprises
Industrial research projects	No minimum percentage	No minimum percentage	No minimum percentage
Experimental development projects	10.00%	No minimum percentage	No minimum percentage
Organisational and process innovation projects	25.00%	10,00&	No minimum percentage
Preliminary studies for industrial research work	No minimum percentage	No minimum percentage	No minimum percentage
Environmental protection projects	10.00%	No minimum percentage	No minimum percentage
Energy efficiency projects	25.00%	10.00%	No minimum percentage
Regional investment projects	75.00%	75.00%	75.00%
Training projects	No minimum percentage	No minimum percentage	No minimum percentage

the electronic headquarters of the Ministry of Industry, Trade and Tourism.

g) Without prejudice to the above, a number of ceilings and maximum aid intensities are laid down, which meet the following requirements:

- The maximum aid ceilings and intensities to be granted will be calculated for each primary project and beneficiary entity within the cluster.

- For each primary project and beneficiary entity within the grouping, the total financing to be granted, nominal loan plus grant, will be a maximum of 80 per cent of the bankable budget, except for the regional investment aid line, which will be 75 per cent.

- The minimum percentage of the fundable budget in the form of a loan to be granted is detailed in the table below.

- The maximum subsidy amount to be awarded per primary project and beneficiary entity within the cluster may be limited by the conditions set out in the above table, by the fulfilment of the commitment to contribute to the climate change and digital transformation objectives detailed above and for other reasons to be established in the relevant calls for proposals.

- The sum of the gross grant equivalent of the loan and the grant awarded per primary project and beneficiary entity within the grouping may not exceed the amounts and ceilings set out.

- The PERTE-VEC also includes a comprehensive table of the types of projects, the maximum gross intensities per primary project and beneficiary entity:

h) The plan also establishes the regime for non-compliance with its provisions, distinguishing between **technical non-compliance**

Types of projects	Maximum gross aid intensities in the form of a gross subsidy equivalent to the beneficiary entities within each grouping (per primary project and entity)		
	Non-SMEs	Medium-sized companies	Small and micro enterprises
Industrial research projects	Up to 50% of the eligible project cost	Up to 60% of the eligible cost of the project	Up to 70% of the eligible cost of the project
Experimental development projects	Up to 25% of the eligible cost of the project	Up to 35% of the eligible cost of the project	Up to 45% of the eligible cost of the project
Organisational and process innovation projects	Up to 15% of the eligible cost of the project	Up to 50% of the eligible project cost	Up to 50% of the eligible project cost
Preliminary studies for industrial research work	Up to 50% of the eligible project cost	Up to 60% of the eligible cost of the project	Up to 70% of the eligible cost of the project
Environmental protection projects	Up to 40% of the eligible cost of the project	Up to 50% of the eligible project cost	Up to 60% of the eligible cost of the project
Energy efficiency projects	Up to 30% of the eligible cost of the project	Up to 40% of the eligible cost of the project	Up to 50% of the eligible project cost
Regional investment projects	According to the approved regional aid map in force at the time of grant		
Training projects	Up to 50% of the eligible project cost	Up to 60% of the eligible cost of the project	Up to 70% of the eligible cost of the project

and **financial non-compliance.**

— These are **technical non-compliances:**

- Resisting or obstructing the management centre (responsible for coordinating the granting of aid and ensuring the proper implementation of projects) in its verification work.
- Obtaining the aid by misrepresenting the conditions required for it (or concealing those that would have prevented it).
- Failure to provide (or insufficient) justification for the implementation of projects.
- Non-compliance with the obligation to prove emission benchmarks.
- Failure to comply with the principle of "no significant harm".

Such non-compliance shall give rise to the appropriate reimbursement of the primary project concerned or of the entire application, as well as the right to seize guarantees in the event of non-payment by the beneficiary entity.

— **Financial default** is the non-payment of repayment instalments in any of the following cases:

- Failure to make two consecutive repayments of principal or interest due on loans granted in two consecutive periods will result in the early maturity of such loans.
- For each entity benefiting from aid in the form of a loan, the decapitalisa-

tions or decreases in the contributions of members of the company, during the financial years corresponding to the year of payment of the loan and the two following years, which cause the loan granted to breach the limits established for the accumulated outstanding exposure of the entity.

Finally, in terms of penalties and liability arising from the implementation of projects eligible for incentives under the PERTE-VEC, the system provided for in the Subsidies Act 38/2003 of 17 November and its implementing regulations approved by Royal Decree 887/2006 of 21 July, must be followed.

Europe

Commission Delegated Regulation (EU) 2021/1958 of 23 June 2021 supplementing Regulation (EU) 2019/2144 of the European Parliament and of the Council by laying down detailed rules concerning the specific test procedures and technical requirements for the type-approval of motor vehicles with regard to their intelligent speed assistance systems and for the type-approval of those systems as separate technical units and amending Annex II to that Regulation

The purpose of this Regulation is to lay down the technical requirements for type-approval of intelligent speed assistance (**ISA**) as a system and as a separate technical unit. To this end, it lays down as a basic requirement for such systems that they include a speed limit information function (**SLIF**) and additionally either (a) a speed limit warning function (**SLWF**) or (b) a speed control function (**SCF**).

In view of the above, the Regulation (i) requires for the approval of ISA systems that they include a failure warning (should a failure occur) according to the optical and acoustic requirements detailed in the Regulation, (ii) fixes the operating parameters and technical requirements related to the activation and deactivation of ISA systems, and (iii) determines that, for the technical review of such systems, it shall be allowed to analyse their correct operating status as regards the visible warning signals, as well as their operating software.

On the other hand, that Regulation lays down as requirements for the approval of the SLIF component: (i) that it includes a display placed in the direct field of vision of the driver, in accordance with the technical prescriptions laid down in this Regulation¸ (ii) the description of the way in which the SLIF will warn the driver of the speed; (iii) the determination of the speed limits with regard to the country in which the vehicle will circulate; and (iv) the parameters to be governed by the tests of such systems.

Finally, if manufacturers choose to incorporate the SLWF system into the ISA, the Regulation lays down requirements for (i) the visual, haptic and sound requirements to be integrated into the warning systems and (ii) the requirements for the testing of the SLWF system. Finally, in the event that the SCF system is chosen to be incorporated in the ISA, it shall comply with (i) the operational requirements for the activation and deactivation of the SCF and (ii) the technical parameters governing the speed limitation when the SCF system is activated.

Regulation No 100 of the Economic Commission for Europe of the United Nations (UNECE) — Uniform provisions concerning the approval of vehicles with regard to specific requirements for

the electric power train

This Regulation lays down the technical prescriptions for the approval of vehicles with regard to the specific requirements of the electric power train as well as the formal requirements and documentation necessary to apply for such approval. The Regulation divides the approval requirements into two parts: (a) the type-approval with regard to the specific requirements of the electric power train and (b) the type-approval requirements for rechargeable energy storage systems ('**REESS**').

With regard to the first part, this Regulation lays down the following technical requirements:

a) Safety requirements to be met by electric power trains; stipulating requirements for protection against direct and indirect contact, marking to be incorporated in such components, insulation resistance requirements, water protection systems, etc.

b) For the REESS of electric power trains, this Regulation includes technical and safety requirements, warnings in case of REESS failure, warnings in cases of low REESS low energy content, technical prescriptions to avoid accidental displacement of the vehicle and parameters for the determination of certain emissions.

With regard to the second part, this Regulation lays down the following technical requirements for the type-approval of REESS:

a) Permissible parameters in relation to liquid leakage and risks of rupture, fire or explosion.

b) Requirements in relation to thermal shocks and cycles.

c) The operating parameters of REESS in cases of mechanical impacts.

d) The safety requirements and parameters relating to the mechanical integrity of such systems.

Likewise, this Regulation establishes the parameters that must govern the tests of the different components, the documentation necessary to process the application for type-approval and include, in its different annexes, the weights and measurements for each of the parts and pieces.

UN Regulation No 154 – Uniform provisions concerning the approval of light duty passenger and commercial vehicles with regards to criteria emissions, emissions of carbon dioxide and fuel consumption and/or the measurement of electric energy consumption and electric range (WLTP)

This Regulation establishes the technical prescriptions for the approval of passenger cars and light commercial vehicles with regard to light vehicle emissions based on the world harmonised light vehicle test procedure ('**WLTP**') included in UN GTR No 15 and the updated evaporative emissions test procedure (Type 4 test) which has been developed in UN GTR No 19. It will enable Contracting Parties to issue and accept approvals based on these new type approval tests. In addition, this new Regulation includes an update of the Type 5 test for verifying the durability of pollution control devices and updated requirements for on-board diagnostic ('**OBD**') systems. These updates are presented in order to reflect the changes from the previous type 1 test based on the New European Driving Cycle ("**NEDC**") to the new WLTP type 1 test.

This Regulation provides requirements for two levels of approval. The first level, level 1A, requires testing using a four-stage WLTC cycle (low, medium, high and extra-high). The second level, level 1B, requires testing on a three-stage WLTC cycle (low, medium and high).

With regard to the scope of Level 1A, this Regulation applies to the type-approval of vehicles of categories M1, M2, N1 and N2 with a reference mass not exceeding 2610 kg with regard to the WLTP type 1 test for gaseous compound emissions, deposited particulates, suspended particle number, carbon dioxide emissions and fuel consumption or the measurement of electric energy consumption and electric range and to the type 4 test for evaporative emissions.

This Regulation also lays down rules for verifying the durability of pollution control devices and OBD systems. At the request of the manufacturer, the type approval granted under this Regulation may be extended from the vehicles mentioned above to vehicles of categories M1, M2, N1 and N2 with a reference mass not exceeding 2 840 kg and complying with the conditions laid down in this Regulation.

Finally, with regard to the scope of Level 1B, the Regulation applies to the type-approval of vehicles of categories M2 and N1 with a technically permissible maximum laden mass not exceeding 3 500 kg and to all vehicles of category M1 with respect to the WLTP type 1 test for gaseous compound and deposited particulate emissions and for carbon dioxide emissions and fuel consumption or the measurement of electric energy consumption and electric range and to the type 4 test on evaporative emissions. This Regulation also lays down rules for verifying the durability of OBD systems.

UN Regulation No 161 – Uniform provisions concerning the protection of motor vehicles against unauthorized use and the approval of the device against unauthorized use (by mean of a locking system)

This Regulation lays down the technical prescriptions for type-approval, for vehicles of category M1 and N1, with regard to their devices to prevent unauthorised use (by use of a locking system).

As general provisions, this Regulation stipulates that such systems shall operate in such a way as to require their deactivation in order to enable the engine to be started by the normal control of the vehicle and to be steered or moved forward. To this end, it stipulates that the deactivation of the system against unauthorised use of the vehicle shall be operated by the use of a key and lays down the technical requirements that such a device must meet in order to prevent it from being easily manipulated or susceptible to sabotage.

In relation to the keys enabling the deactivation of the aforementioned systems, requirements are laid down with regard to their coding and means of operation.

Finally, as part of these general specifications, this regulation establishes the obligation that systems to prevent unauthorised use of vehicles must be included in the original equipment (standard equipment) of vehicles.

This Regulation also establishes a number of particularities with regard to the functionalities of such a system, in order to prevent unauthorised use of the vehicle; thus setting the technical parameters to govern (a) devices acting on the steering of vehicles; (b) systems acting on the transmission or brakes; and (c) systems acting on the gearbox.

Finally, this Regulation lays down the criteria

that will govern the tests of the different components, the documentation necessary to process the application for type-approval and includes, in its different annexes, the weights and measurements for each of the parts and pieces.

Public Consultation

Public Consultation. Inception impact assessment and roadmap of 4 October 2021 on vehicle safety: revision of the EU roadworthiness package

In this quarter, the European Commission submitted for public consultation the review of the regulatory framework for vehicle roadworthiness testing in the context of the Sustainable and Smart Mobility Strategy of 9 December 2020, which includes the EU's commitment to "zero road deaths" by 2050. To this end, the Commission notes that the technological progress of the EU's vehicle fleet requires updating vehicle testing policies to bring the regulatory framework and protocols into line with the reality of the state of the art in the automotive sector, in particular Directives 2014/45/EC (on periodic roadworthiness tests for motor vehicles and their trailers), 2014/47/EC (on the technical roadside inspection of commercial vehicles circulating in the Union) and 1999/37/EC (on the registration documents for vehicles).

The Commission states that the introduction of (a) advanced safety features in vehicles and (b) a significant tightening of emission legislation has made vehicles in the EU increasingly technically complex; this makes it necessary to adapt the methods of testing vehicles throughout their lifetime, and - in particular - in roadworthiness testing procedures.

Therefore, the specific objectives to be pursued by the regulatory review are (a) to ensure the functioning of modern electronic safety components, advanced driver assistance systems and automated functions during the lifetime of vehicles, (b) to perform meaningful emission tests during vehicle inspections and (c) to improve the electronic storage, reading and exchange of roadworthiness-related vehicle identification and status data between EU Member States, as well as performance data, inter alia based on the digitisation of administrative documents and certificates.

In pursuit of these objectives, the Commission will focus its regulatory review on the following points:

a) The amendment of Directive 2014/457/EC by incorporating (i) methods to check the functioning of safety-relevant electronic components, advanced driver assistance systems (ADAS) and automated functions; (ii) new methods to measure exhaust emissions to overcome current shortcomings (e.g. absence of measurements of particulate matter and nitrogen oxides); (iii) new methods to read out data stored on board vehicles; (iv) requirements and means to effectively combat periodic electronic roadworthiness testing of vehicles; (v) adjustment of the scope (N1, M1, two- and three-wheel vehicles); (vi) requirements and means to fight against the periodic electronic roadworthiness testing of vehicles; (vii) requirements and means to effectively fight against the failure of vehicles to meet the requirements

of Directive 2014/457/EC; (iv) periodic electronic roadworthiness testing of vehicles; (v) adjustment of the scope (N1, M1, two and three-wheel vehicles); (vi) requirements and means to effectively combat fraud and manipulation of odometers; and finally (vii) mandatory exchange of roadworthiness certificate data to verify its validity during re-registration in another EU Member State, including cybersecurity and data protection aspects.

b) The amendment of Directive 2014/47/EC, introducing (i) monitoring in the Member States of the register in case a notification is received following the prohibition or suspension abroad of a certain vehicle; (ii) mandatory load securing provisions and increasing the level of harmonisation; (iii) electronic data exchange and storage, allowing cross-border access to roadside inspection authorities (including cyber-security and data protection aspects); (iv) extension of the scope (N1, M1, two and three-wheel motor vehicles); and - finally - (v) extension of emission tests (nitrogen oxides and particle number, among others), including the use of remote sensing equipment.

c) Finally, the Commission proposes, with regard to Directive 1999/37/EC, to incorporate (i) regulatory improvements to the exchange of roadworthiness data between Member States in electronic format; (ii) the development of electronic tools to improve communication and information exchange between national contact points and to ensure that the content of vehicle register data is accurate and up to date; (iii) full digitisation of registration documents; (iv) odometer and odometer history data to the vehicle register; and (v) measures to facilitate the proper treatment of end-of-life vehicles.

Public Consultation. Civil liability. Adaptation of liability rules to the digital age and artificial intelligence. Inception impact assessment, 18 October 2021

In October, the Commission submitted for public consultation its inception impact assessment to adapt the current rules on civil liability to the digital age and the circular economy. In this regard, the Commission understands that the exponential development and rise of new technologies, such as Artificial Intelligence, robotics and the internet of things, make it necessary to adapt the existing legal system for those cases in which the use of these technologies could result in damage to third parties. To this end, by means of this roadmap, the Commission aims to: (i) provide legal certainty to industry about the risk they assume in the course of their activity, (ii) promote the prevention of harm and (iii) ensure that injured parties are compensated.

The current civil liability regime is based on Directive 85/374/EEC (*Product Liability*) and national liability legislation. The European Directive harmonises liability in case of damage by a producer to a consumer in case of product defect, but depends on national rules on proof of damage and causal link.

In this regard, the documentation for this consultation identifies the following problems that the proposed adaptation is intended to address in terms of consumer protection:

a) On the one hand, it states that the current civil liability law is not fit for the digital age and the circular economy. In particular, with regard to **digital technologies**, the Commission highlights the intangibility attributes of digital products, the cybersecurity and connectivity risks associated with them,

their autonomous behaviour, their constant adaptation, and the complexity of their functioning as factors missing from the current rules. Under the current Directive, importers are considered as producers for the purposes of liability for damages. However, with the new online marketplaces, it is possible that in the future many goods will be purchased directly online without an existing importer in the EU, leaving European consumers with no one to seek redress from under the guidelines of the European Directive.

On the other hand, with regard to **circular economy models**, it is clear that the current regulation has notable shortcomings and imprecision in relation to who would be liable in the event of a defect in a product whose value chain revolves around circular production models.

b) On the other hand, it highlights the existence of significant obstacles to claiming compensation in the Internal Market for defects in digital products and from circular models. In particular, it identifies four factors that this proposal for a regulatory review seeks to address:

- On the one hand, the burden of proof is increased on those affected by a defect, since the technical complexity of digital products and/or products in circular value chains would put them at a disadvantage compared to their producers.

- On the other hand, if such an amendment is not made at Community level and if this function is left exclusively to national legislators, it could fragment the rules of civil liability and make the compensation procedure more difficult.

- Moreover, given that products equipped with artificial intelligences have the ability to learn based on their functioning, this could lead to unpredictable outcomes which, under the current framework of regulatory protection, does not facilitate compensation to potential injured parties.

- And finally, in addition to the above, the time limits and the minimum amount of 500 euros for claiming compensation could mean that, as a result of the functioning and costs of digital products and derivatives of circular chains, the damage that a person could suffer could be unsatisfied.

For all these reasons, the regulatory review is outlined with two clear objectives in mind: (1) to **modernise liability rules** to ensure a higher level of consumer protection; and (2) to **reduce the obstacles for** those potentially affected by goods of the digital age and circular economy to be properly **compensated**. With this in mind, this paper sets out two proposed courses of action and the resulting options:

(i) On the one hand, the **adaptation of strict liability rules to the digital age and circular economy** is outlined as an option, for which the following is considered:

- Revise the Directive to extend strict liability rules to cover intangible products (digital content, software) that cause physical/material damage, and to address (*x*) defects resulting from changes to products after they are put into circulation, (*y*) defects resulting from interactions with other products and services (e.g. with the Internet of Things) and (*z*) connectivity and cybersecurity

risks. In addition, extend strict liability to online marketplaces where they do not identify the producer.

— As a second option, building on the above considerations, extend the range of damages for which compensation can be claimed under the current regulatory framework to also cover non-material damage (e.g. loss of data, environmental damage, privacy infringements, etc.).

— And finally, harmonise the existing strict liability regimes for operators/users that apply to AI-equipped products and AI-based service providers. Following existing national models, the operator could be defined as a person, other than the producer, who can exercise a certain degree of control over the risks associated with the operation. Alternatively, the strictly responsible person could be identified by reference to the "user" as defined in the proposed Artificial Intelligence Act, possibly linked to an insurance obligation.

(ii) On the other hand, options for **lowering the barriers to obtaining compensation** under the existing rules of evidence and procedural aspects are considered:

- As options for reducing the **obstacles to obtaining compensation** under the current rules, the Commission proposes:

  — Alleviating the burden of proof by (*x*) obliging the producer to disclose technical information to the injured party and (*y*) allowing courts to infer that a product is defective or has caused the damage in certain circumstances.

  — Reverse the burden of proof. In the event of of damage, the producer would have to prove that the product was not defective.

  — In addition to the above options, adapt the notion of "defect" and the alleviation/reversal of the burden of proof to the specific case of AI and remove the "development risk defence" to ensure producers of products that continuously learn and adapt while in operation remain strictly liable for damage.

  — Finally, in combination with the above options, ease the conditions for making claims (time limits and EUR 500 minimum threshold for damage to property).

- On the other hand, as **options to solve the proof-related challenges posed by AI to national liability rules**, the following is proposed: (1) guidance to Member States on the burden of proof requirements; (2) legislative measures to alleviate the burden of proof; (3) legislative measures to facilitate the evidentiary process in cases where AI technology is particularly opaque; and (4) harmonisation of claims where there is a finding of fault by AI operators.

News

Draft UNECE legislation on the durability of electric vehicle batteries

With the support of countries such as Canada, China, Japan, Korea, the United Kingdom and Northern Ireland, the United States and the

European Union, the Working Group on Electric Vehicles and the Environment of the United Nations Economic Commission for Europe has drafted a proposal for a Global Technical Regulation. The purpose of the text is to provide a harmonised method for establishing and verifying minimum battery performance requirements for pure electric vehicles ("**PEVs**") and plug-in hybrid electric vehicles ("**OCV-HEVs**"), in order to maximise the information provided to owners of such vehicles on the condition of the batteries that these vehicles incorporate and to allow the authorities of the countries that adhere to this regulatory text to track and monitor them.

The provisions of the planned regulation will apply to vehicles of categories 1-2 and 2 maximum laden mass of 3855 kg and of category 1-1 which are PEVs or OCV-HEVs, which also have an original battery installed, and contain the following requirements.

On the one hand, manufacturers will be required to install vehicle battery State of Certified Range and State of Certified Energy (**SOCR** and **SOCE**) monitoring systems during the lifetime of the vehicle and to update them periodically to ensure measurement accuracy. For the purpose of informing vehicle owners, manufacturers should provide users with information on the latest SOCE values, e.g. as a dashboard indicator, a warning in their mobile applications, or through the vehicle's own infotainment systems.

Minimum Durability Requirements are also established, through minimum acceptable values for SOCE and SOCR at certain points in the life of the vehicle, thus obliging manufacturers to certify that the batteries installed in their vehicles will lose less than 20% of their initial capacity in 5 years or 100,000 km and less than 30% in 8 years or 160,000 km; all this to guarantee the durability and quality of the batteries included in electric vehicles, and -synergistically- to alleviate the pressure on the raw materials necessary for their production.

On the other hand, the new legislation will require manufacturers to monitor SOCR and SOCE indicators during the life and operation of vehicles and to implement mechanisms to make this information available to national authorities, in a format to be agreed between the national authorities and the manufacturers (i.e. annual reports on warranty claims and annual statistics on repairs, both on batteries and other systems that can influence electric energy consumption). This information shall be provided once a year - for each battery type - for a period of 5 years (or 100,000 kilometres), or 8 years (or 160,000 kilometres).

Manufacturers shall complete the verification procedure for SOCR and SOCE monitors at a frequency agreed with the relevant national authorities up to 5 years (or 100 000 km) or 8 years (or 160 000 km) after the sale of the last vehicle of each type of monitor, and report the results of the verification to those authorities, who may decide whether to carry out their own verification of the SOCR and SOCE monitors, or whether to require further information from the manufacturers.

In the event that these systems do not pass the assessment by the relevant authorities, it will be assumed that the systems do not accurately report their durability, and manufacturers should take appropriate measures to remedy this. This will require manufacturers to agree with the national authorities whether to replace, repair or update the software of the systems to ensure their proper functioning.

The policy proposal will be put to a vote at the WP.29 session of the World Forum for

Harmonisation of Vehicle Regulations in March 2022 and those countries that vote in favour of it will have to transpose it into national law with a specific timetable for the entry into force of the new regime, which could come as early as 2023.

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