

Newsletter

April – May 2020

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EAC: Mobility during the pandemic

The dissemination of the SARS-CoV-2 coronavirus is currently drastically restricting the right to freedom of movement in Europe. On the one hand there are border controls, on the other hand there are different mobility rules and regulations within the individual European countries that could mean a limited confinement, a ban on contacts or even an absolute curfew, accordingly the traffic density on Europe's roads has decreased significantly. Despite initial announcements of easing measures, caution - and consideration - is still required.

Local and long-distance public transport was reduced and suspended in many places in the wake of the pandemic, on top of that it is also considered to be risky due to the inevitably higher density of people. "What remains is the individual private transport, that is, the recourse to the car, motorcycle, bicycle or walking," stated EAC President Bernd Opolka clearly emphasising, "Individual mobility is today more crucial than ever before. For the absolutely required mobility, such as for the journey to work, grocery shopping or seeing a doctor, there is often times no other alternative for your own car that is equally suitable and useful. You are on your own and can reduce the relatively manageable risk of infection, such as when charging or refueling, to a minimum by observing the known hygiene regulations. "

EAC Vice-President Holger Küster also said, "The crisis has given us a new perspective on our mobility. Suddenly we get an unmistakable proof for the importance of diversifying the offer of means of transport. If buses and trains are no longer fully available, you can count yourself lucky if you still have your own car. Now it is becoming clear that biased, general demands for the expulsion of the car were off the track." In addition, Holger Küster claimed that the existing driving bans must also be rethought, "We are now seeing that, despite a drastic decline in traffic, air pollutants continue to reach peak values, for example in Stuttgart. This shows that

these massive interventions in our individual mobility are founded on a highly questionable basis."

"For all those who have to work or have to get hold of things that cannot be postponed and have a car and use it actively in times of crisis, there must not be excessive additional costs.", clarified EAC Vice-President Günther Schweizer underscoring, "On the contrary, the shift towards to the car must be facilitated with vigour, for example by extending the validity of the parking ticket or providing cheaper parking spaces in inner-city garages."

Driving not only guarantees needs-based mobility, but also contributes to the containment of the virus through exposing by virtue of the nature road users in public spaces to fewer health risks.

Further Links:

- [EAC press release](#)

The revival of the automotive sector

On 5th April four European automobile associations (ACEA, CECRA, CLEPA and ETRMA) published an action plan with 25 key actions to ensure a strong relaunch of the sector and the economy as a whole. The action plan is aimed at decision-makers at EU and national level and contains concrete recommendations for a successful way out of the corona crisis, taking into account the overall objectives of a digital and carbon neutral society.

One point, which is also included in the action plan, has been the subject of increased national and European discussion over the past month: purchase incentives or scrapping programmes (keyword: scrapping premium). In their action plan, the four associations emphasise that it is essential "to support the revitalisation of the automotive sector with immediate, targeted and coordinated EU programmes for the renewal of vehicles".

EU Climate Commissioner Frans Timmermans said in a video call with EU lawmakers on Tuesday: "We see that the car industry is asking us to help them by helping households to afford a new car [...]. But why don't we do this through ecological scrapping schemes, by replacing an old and dirty car with a clean, even emission-free one?"

However, scrapping schemes do not have a good reputation and are sharply criticised from various quarters, both ecologically and economically. The German Federal Minister of Finance, Olaf Scholz, for example, has rebuffed the German car manufacturers for the time being, rejected a quick decision on state aid for the automotive industry and instead announced an economic stimulus package at the end of the month. In Germany, there had already been a scrapping scheme in the wake of the financial crisis in 2009. From an ecological point of view, the climate aspect must be considered above all. In order to meet the Paris climate targets, vehicles with fossil combustion engines must be replaced with cleaner alternatives in the medium and long term. Similarly, such purchase incentives would lead to the simple disposal of cars that are still in working order.

But a scrapping bonus is also controversial from an economic point of view. In an interview with Tagesschau.de, economist Claudia Kemfert of the German Institute for Economic Research said: "The results of the 2009 scrapping scheme were disastrous: at five billion euros, it was enormously expensive. It led to pull-forward and take-away effects and not to the desired economic effect. The price structures were permanently damaged [...]. These effects would not have helped the industry in the medium term." Car purchases are also brought forward with a premium, which leads to a gap in the following years. The 2009 premium was also used to buy small cars, especially foreign ones. From a European perspective, however, this would not necessarily be a bad thing, as it would also benefit other European manufacturers and suppliers.

A premium should focus on the neutral promotion of sustainable mobility under the

above-mentioned aspects. In the automotive sector, this should primarily promote clean or emission-free vehicles. Consideration should also be given to promoting people who share their car or use public transport, bicycles or local car-sharing schemes instead.

Nevertheless, the automotive and supplier industry has been hit hard by the crisis and quick help is needed to protect jobs.

Further Links:

- [Action plan of the four associations](#)
- [Euractiv: EU climate chief sees green strings for car scrapping schemes](#)
- [Tagesschau: Kommt die Kaufprämie für die Autoindustrie? \(DE\)](#)

Diesel scandal

The diesel scandal has now been dragging on for several years, but so far there is still no fundamental ruling from the highest court. But this is about to change. Since April 5th, a lawsuit by a car buyer against the car manufacturer Volkswagen has been before the highest German court, the Federal Supreme Court in Karlsruhe. The case concerns possible claims for damages by the plaintiff against VW. The plaintiff had purchased a used diesel vehicle of the manufacturer from a dealer in early 2014. Since the VW diesel vehicle is equipped with a cut-off device, the plaintiff wants to return the used car and get back the full purchase price of approximately 31,500 euros. In particular, the question is whether the purchase of cars containing the EA189 diesel engine could be considered as actually causing harm to customers.

It was only at the end of February that VW reached an agreement with the Federation of German Consumer Organisations on compensation payments for approximately 260,000 German motorists who had joined a class action suit. The deadline for accepting VW's offer expired on April 20.

After the first day of the hearing, a first positive trend for the plaintiff is now becoming apparent,

as the judges are sceptical in a preliminary assessment of VW's attitude that owners of a diesel vehicle have not suffered any damage due to the illegal exhaust technology. VW is critical of this initial assessment, as the risk of a shutdown had "never existed at any time."

The pending verdict could set a precedent for further lawsuits not only against Volkswagen, but also against other automobile companies. It can also be assumed that the ruling of the Federal Supreme Court will also have an impact on proceedings in other European countries.

ECJ: Shutdown devices not allowed

In addition to the proceedings in Germany, the Advocate General of the European Court of Justice (ECJ), Eleanor Sharpston, in a French case against VW, published an opinion on the admissibility of so-called thermal windows, temperature-dependent cut-off devices.

In the opinion of Advocate General Sharpston, a device which regulates the operation of the exhaust gas purification system of vehicles with diesel engines upwards during the registration test of these vehicles is a "cut-off device" prohibited under EU law.

The Advocate General takes the view that only direct risks of damage which affect the reliability of the engine and result in the vehicle presenting a real danger while driving can justify the presence of a cut-off device. Advocate General Sharpston therefore considers that the objective of slowing down the ageing or clogging of the engine does not justify the use of a cut-off device. It is for the national court to determine whether the device in question falls within the parameters of that exception. However, the Advocate General points out that, according to the expert appointed by the national court, the ERG system 'does not damage the engine', but may reduce the engine's power as it is used and cause it to clog up more quickly, resulting in 'more frequent and more costly' maintenance work. In the light of that finding of the expert's report, the Advocate General considers that the cut-off device in question does not appear to be necessary to

protect the engine from damage or accidents and to ensure the safe operation of the vehicle.

It can be assumed that the judgments of the ECJ in the diesel emissions scandal will be based on these expert opinions. Furthermore, the assessment that cut-off devices are not permissible would possibly affect all diesel engines currently in use.

ECJ Advocate General Campos Sánchez-Bordona had already clarified in an opinion at the beginning of April that under European law a company can be sued by the buyers of manipulated vehicles in the courts of the Member State in which the vehicles were purchased.

Further Links:

- [Süddeutsche Zeitung: VW zu BGH-Einschätzung: Autokauf muss nicht Schädigung sein \(DE\)](#)
- [Advocate General's Opinion in Case C-693/18 CLCV and Others \(defeat device on a diesel engine\)](#)

Covid-19 apps and mobility data

One topic that has been increasingly discussed in recent days and weeks in the discussions about containing the COVID 19 crisis is the creation and use of mobile apps and the use of anonymized mobility data.

On 8 April the Commission recommended steps and measures to develop a common EU approach to the use of mobile apps and data from mobile devices in the fight against the coronavirus pandemic. The recommendation sets out a process for the adoption of a toolkit with Member States focusing on two areas:

(1) a coordinated, pan-European approach to the use of mobile apps to enable citizens to make effective and more targeted social distance management arrangements and to enable alerting, prevention and follow-up of contacts; and

(2) a common system for modelling and predicting the evolution of the virus through

anonymised and aggregated mobile phone location data.

The Recommendation sets out the main principles for the use of these apps and data in terms of data security and respect for EU fundamental rights such as privacy and data protection. In particular, recital 10 and Articles 18 to 20 address the use of mobility data. The Commission would like to stress that the development of the tools should be guided by the principles of privacy and data protection.

However, the Member States agreed already on 16 April with the Commission and in consultation with the European Data Protection Committee that mobile applications should not process location data of persons, as this is neither necessary nor recommended for the purpose of contact tracing.

The EU toolbox, adopted by EU countries and supported by the European Commission, emphasises that recording a person's movements in contact tracing applications would pose major security and data protection problems. These apps should also be both temporary and voluntary, ensuring that no user knows the identity of infected persons or of close contacts of infected persons. According to the report, the storage of such data should also be limited in time in order to increase security and privacy.

Furthermore, in a plenary resolution adopted on 17 April, the European Parliament stressed that national and EU authorities must fully comply with data protection and privacy legislation and that mobile location data can only be processed in accordance with the ePrivacy Directive and the GDPR.

Further Links:

- [Recommendation of the Commission](#)
- [Common EU-Toolbox for Member States](#)
- [Press release of the European Parliament](#)
- [EAC Position Paper: Connected Cars - Uniform Rules for the Handling of Vehicle Data for the sake of Consumer Protection and Welfare](#)

Transport and tourism in crisis

After the work of the European Parliament was reduced to the most necessary areas in the wake of the Corona crisis, two meetings of the Transport and Tourism Committee were held for the first time in April via video conference. As both the transport and tourism sectors in Europe were particularly hard hit by the crisis, the two conferences were devoted to an in-depth debate on the crisis, in which both Commissioners responsible for transport and tourism took part: Internal Market Commissioner Thierry Breton and Transport Commissioner Adina-Ioana Vălean.

During the meeting, the members of the TRAN Committee called on the Commission to present an action plan to save the tourism sector and to set up a crisis management mechanism.

In the discussion with Breton on a sector-specific rescue plan and strategy for the coming months, it was stressed that while the top priority is direct and indirect aid to the tourism sector, the opportunity should be taken to promote sustainability more strongly.

In the transport sector, the immediate focus was on maintaining supply chains throughout the EU while safeguarding the security of EU citizens, as Commissioner Vălean stressed. As a next step, the whole transport sector needs a well-prepared common exit strategy with coordinated measures between Member States to reopen borders to avoid the kind of unilateral action that was prevalent at the beginning of the pandemic.

Further Links:

- [TRAN-Newsletter with a summary of the session](#)

Calendar

Meeting Dates

Council

Transport, Telecommunications and Energy Council	04-05/06/2020
Competitiveness Council	28/05/2020
Council of Justice and Home Affairs	04/06/2020
Council of Environment	22/06/2020

Plenary

tba

Committees

Environment (ENVI)	tba
Internal Market / Consumer (IMCO)	tba
Justice & Home Affairs (LIBE)	tba
Transport (TRAN)	tba

Events (Brussels)

27/05/2020	<u>High Level Conference - Skills and transformation of the EU's automotive sector</u>
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EAC-Events

27/10/2020	EAC Autumn Meeting in Brussels
28/10/2020	EAC Lunch Debate