




Figiefa General Assembly

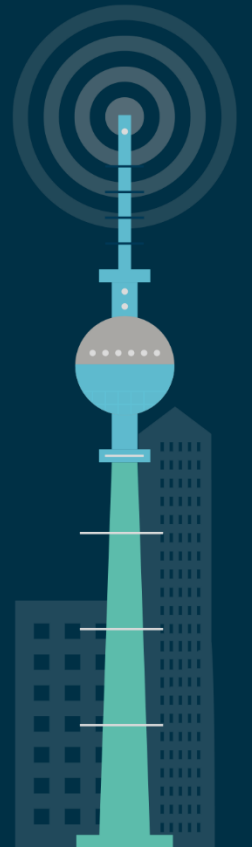
Three upcoming lighthouse decisions
from the ECJ for the Independent
Aftermarket

6 October 2022

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Agenda

A. General

B. ECJ Cases

1. Case 1: Access to the live vehicle data stream via the OBD port (ECJ C-296/22)
2. Case 2: Monetization of technical information (ECJ C-390/21)
3. Case 3: Access obstacles (ECJ C-319/22)



Key Goal

- To achieve a Europe-wide, binding clarification of the TAR rules, the key goal is to make German court of first instance refer question of interpretation of TAR to the ECJ
- **Regional Court of Cologne referred three cases of TAR interpretation to the European Court of Justice (ECJ)!**

**Key strategic goal:
Europe-wide, binding clarification by the ECJ**



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ATU/Carglass vs. FCA



Background of Case 1: Blocking of OBD Ports (Secure Gateways)

- The OBD port is the gateway to the vehicle data stream; repairers need access for diagnosis and repair services
- More and more OEMs block the OBD ports of their vehicles. Access is not possible for the IAM, or requires a (costly) certificate issued by the OEM
- OEMs pose access conditions (unlocking the OBD port) at will (payments, registration requirements, internet connection, constant monitoring)
- This is **not allowed** under type approval law:
„unrestricted access“ to „direct vehicle data stream“ without „any access code or other device or method obtainable only from the manufacturer“



Case 1: Access to the OBD live vehicle data stream (ECJ C-296/22)

- A.T.U and Carglass (Claimants) vs. FCA Italy (Defendant)
- OEM argument: **Cybersecurity**
- IAM: **Security by design**: Access is key for competition, security must be achieved through product design, not by putting the onus on the competition
- **Key problem**: OEMs and the IAM are competitors on the market for vehicle repair and maintenance; OEMs can decide who (of their competitors) can work on a vehicle (repair/maintenance)
- If the OEM's server is down for whatever reason, the entire IAM cannot work on any of the OEM's vehicles
- OEMs are under an obligation to ensure the cybersecurity of their vehicles, but this should be solved through vehicle design, not through access restrictions; various regulations on cybersecurity specifically state that cybersecurity measures should not in any way impede access rights
- **Decision expected late summer/autumn 2023**



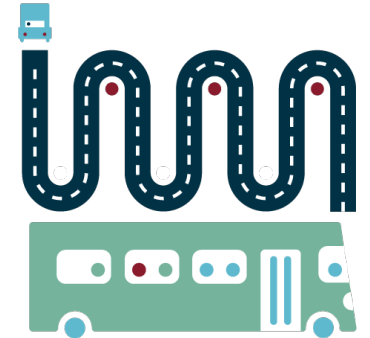
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ADPA/GVA vs. PSA



Case 2: Monetization of technical information (ECJ C-390/21)

- Key question: What are „reasonable and proportionate fees “?
- **OEMs**: Are entitled to commercialize information
- **IAM**: Technical information must be provided in the interest of competition; fees merely serve to compensate for costs of providing access
- Decision will be announced **27 October 2022**, the ECJ's reasoning will likely have a direct impact on the discussions around compensation in the Data Act



„The manufacturer may charge reasonable and proportionate fees for access to... information”

Art. 63 TAR

Case 2: Also Clarification on „Scope“

Is Regulation (EU) 2018/858 applicable to vehicles type-approved before 9/2020?

- Does Regulation 858 also apply to vehicle models type-approved before 9/2020?
- The rules on access to vehicle OBD and repair and maintenance information are typically not product-related (no changes to the vehicle necessary)

Consequences:

If the new rules on RMI apply also to older Euro 5/6 vehicle models, in particular:
OEMs must provide access to machine-readable and electronically processable datasets for vehicles type-approved under Euro 5/6

➔ Clarification by the ECJ on October 27, 2022!



3

GVA vs Scania



Case 3: Access obstacles regarding „mass data“ (ECJ C-319/22)

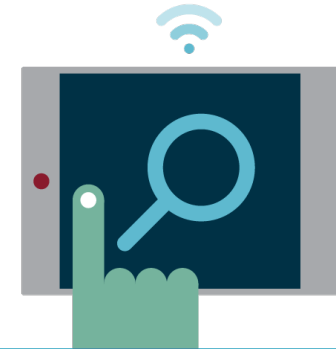
- Dispute on the meaning of „**machine readable and electronically processable datasets**“:

machine-controlled query via database interface

or

manual search by a human user on-screen

- OEMs allow manual search and „print screen to PDF“
- Decision expected late summer/autumn 2023



Information must be provided as „machine-readable and electronically processable datasets“

Art. 61 TAR

Case 3: Access obstacles regarding „mass data“

- Even for newer vehicles, OEMs refuse to provide mass data
- They offer only a predefined download and fixed datasets for one single VIN-related query, piece by piece, one by one
- Without access to mass data, IAM cannot offer products and services related to VINs (no repair manuals allocated to individual VINs, no unequivocal parts identification possible etc.)

**Workshops cannot search efficiently for IAM spare parts;
clear trend to use OEM databases like Partslink24 and buy OE parts**

Case 3: GDPR

VMs claim that VIN is personal data and that this prevents them from releasing mass data incl. VINs.

*IAM claim that Art. 61 (1) of Regulation (EU) 2018/858 constitutes a **legal obligation** for vehicle manufacturers to disclose VINs as part of RMI (according to Art. 6 (1) lit. c) of the GDPR, data protection is not an issue if access to information is legally required).*

ECJ will clarify on GDPR in the upcoming “case 3” judgement



*“Processing shall be lawful only if (...) processing is necessary for compliance with a **legal obligation** to which the controller is subject;”*

Art. 6 (1) lit. c) GDPR

Thank you.



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