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Gómez-Acebo & Pombo

Newsletter

AUTOMOTIVE AND SUSTAINABLE MOBILITY

No. 26



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Case law

Spain

Santander Companies Court Judgment no. 12/2025 of 21 February 2025 (Proc. 21/2024). Unfair competition. Prohibited misleading advertisements.

An interesting judgment on greenwashing in Spanish multinationals' net-zero and sustainability communications.

It was claimed that the defendant engaged in misleading, unlawful and unfair advertising in its commercial communications and advertising campaigns, in violation of Articles 5 and 7 of the Unfair Competition Act, when mentioning commitments such as achieving net zero emissions by 2050 and promoting sustainable mobility.

The court concluded that the defendant's communications were not advertisements per se, inasmuch as the contents of the defendant's corporate website were not commercial communications directly addressed to consumers, but information voluntarily accessible to them.

Moreover, the court noted that references to company attributes that are not linked to specific products or services, but rather to general corporate commitments, can hardly be deemed unfair.

In reaching this conclusion, the court took into account the low traffic from the corporate website to the commercial website (1.53% of visits) and the low number of visits to the sustainability section (5%). It also pointed out that the website offers a wealth of information that allows visitors to learn about the company and that its commitment to the 17 sustainable development goals is valued by rating agencies.

Although the greenwashing claims were not upheld by the court, it noted that there must be proportionality between a company's advertising and its activities, without giving weight to 'a drop in the ocean' that could 'give rise to a mistaken expectation on the part of the consumer as to the true nature of the company and its products, and materially distort the economic behaviour of the average consumer'.

Europe

Judgment of the Court of Justice (Fourth Chamber) of 21 November 2024 (Appeal — Common commercial policy — Measures to ensure the exercise by the European Union of its

rights under international trade rules — Implementing Regulation (EU) 2018/886 — Customs union — Union Customs Code — Decisions relating to binding origin information (BOI)

adopted by national customs authorities — Delegated Regulation (EU) 2015/2446 — Concept of ‘processing or working operations which are not economically justified’.

The Court of Justice ruled on the appeal brought by Harley Davidson Europe Ltd and Neovia Logistics Services International NV against the judgment of the General Court dismissing their action for annulment of Commission Implementing Decision (EU) 2021/563. That decision revoked the binding origin information (BOI) decisions certifying that Harley-Davidson motorcycles for the EU market originated in Thailand.

The appellants claimed errors in the interpretation of Article 33 of Delegated Regulation 2015/2446, which deals with processing or

working operations which are not economically justified. They argued that the General Court had relied solely on the Form 8-K and not on all the available facts, including evidence produced after the publication of that form. According to Harley Davidson, the relocation of production to Thailand was not primarily intended to avoid the additional tariff burden imposed by the EU.

The Court of Justice rejected the appeal, explaining that Article 33 is only applicable if the available data show that the purpose of the relocation was to avoid the trade policy measure. Furthermore, it emphasised that the decisive test is the principal or dominant purpose of the operation and that it is for the economic operator to prove that there was a different reasonable ground.

Legislation

Spain

Regional Cabinet Decision, of 6 November 2024, approving the regulatory rules and establishing the procedure for the direct granting of incentives under the ‘Mueve Madrid Aid Plan for the promotion of sustainable and accessible mobility for all in the Madrid Region’.

The Plan establishes the direct granting of aid for the scrapping of vehicles of categories M1

and N1 without an environmental badge and the purchase, from 1 January 2024, of electric vehicles, including pedal-assisted cycles, electric mopeds and electric fuel cell vehicles (hydrogen vehicles) of category M1, intended for use as taxis or PHV services (Articles 1 and 8). The incentive programme will run until 31 December 2026 (Article 8). The budgetary allocation for the aid in 2025 is €5,018,528, of which at least 30% will be allocated to applications from beneficiaries residing in LEZs in municipalities

of the Region of Madrid or who carry out their professional and economic activity therein¹. The aid is compatible with each other and with other national and international public aid, within the limits established in Articles 6, 7 and 9 of the regulatory rules (Articles 1 and 9). Applications must be submitted within three months of the purchase or scrapping of the vehicle. In the case of vehicles purchased between 1 January 2024 and the publication of the regulatory rules, applications must be submitted within a maximum period of three months from their publication in the Official Journal of the Region of Madrid (Article 10).

Among the subsidies for scrapping M1 and N1 category vehicles, the following stand out: a subsidy of €2,000 when an ECO or zero-emission vehicle is also purchased; a three-year travel pass for the C2 fare zone; and environmental vouchers worth €1,250 for car-sharing and 'motorbike sharing' with zero-emission vehicles.

Industry and Strategic Autonomy Bill (121/000043), published in the Official Journal of the Spanish Parliament on 20 December 2024.

This bill, approved by the Cabinet on 10 December 2024 and published in the Official Journal of the Spanish Parliament on 20 December 2024, will update the current Industry Act 21/1992 of 16 July. It is currently passing through the lower House's Industry and Tourism Committee.

Of particular note are the 'Strategic Industrial Projects' that may be recognised for manufacturing

industries and associated or complementary industrial activities, and intellectual industrial application services. These projects must meet some of the requirements established in Article 28, including having a significant investment volume in national terms, being led by strategic companies or developing net zero emission technologies, 'according to the list established in Regulation (EU) 2024/1735 of the European Parliament and of the Council of 13 June 2024 establishing a framework of measures for strengthening Europe's net-zero technology manufacturing ecosystem and amending Regulation (EU) 2018/1724', which would include, for example, 'battery and energy storage technologies'; 'hydrogen technologies, including electrolyzers and fuel cells'; and 'CO₂ transport and utilisation technologies'. The effects of the declaration of these projects include 'the streamlining of administrative procedures; possible access to public aid without competitive bidding; and preferential processing of patent and utility model applications'.

The bill sets out as serious infringements 'the making of false statements during the approval procedures for vehicles, systems, components and separate technical units [...]' and the falsification of test results for approval. Serious infringements will be punishable by fines of between €3,000 and more than €7,000,000.

Order PJC/1472/2024 of 26 December publishing the Cabinet Decision of 23 December 2024 declaring the activation of the RED Mechanism for Employment Flexibility and

¹ ORDER 848/2025, of 11 March, of the Regional Ministry of the Environment, Agriculture and the Interior, announcing the budgetary allocation available in the 2025 financial year to finance the *Mueve Madrid* Aid Plan for the promotion of sustainable and accessible mobility for all in the Region of Madrid, approved by the Regional Cabinet on 6 November 2024

Stabilisation, in accordance with Article 47 bis of the recast version of the Workers' Statute Act, approved by Royal Legislative Decree 2/2015 of 23 October for the motor vehicle manufacturing sector.

The Cabinet, in its meeting of 23 December 2024, adopted the Decision declaring the activation from 1 January to 31 December 2025 of the RED Mechanism for Employment Flexibility and Stabilisation for the motor vehicle manufacturing sector. The RED Mechanism is an instrument provided for in Article 47 bis of the recast version of the Workers' Statute Act, approved by Royal Legislative Decree 2/2015 of 23 October, which, upon activation by the Cabinet, allows companies to request "measures to reduce working hours and suspend employment contracts" in response to exceptional macroeconomic or sectoral circumstances. The mechanism has been activated on a sectoral basis because 'foreseeable permanent' changes have been observed in the automotive sector, generating retraining needs and professional transition processes for its workers.

Companies that may apply for a temporary reduction of working hours and suspension of employment contracts are those that, as of 30 November 2024, are:

- Companies in the motor vehicle manufacturing sector whose activity is classified under the Spanish standard industrial classification code ('CNAE') 09 2910. These companies may apply for the measures if, between 1 April 2022 and the entry into force of the Decision, they have lost more than 25% of their workers' Social Security registrations and have kept an average of more than 30% of their workforce on temporary collective redundancy.

- Companies that are part of the value chain of the companies in the previous section whose activity is classified under CNAE-09 codes included in Schedule II with work centres located in Spain and in which at least 40% of their turnover in 2023 has been generated in direct transactions with those companies.

Companies applying the Mechanism undertake 'not to carry out individual or collective redundancies, or, except in cases of force majeure, reductions in working hours or contract suspensions for economic, technical, organisational or production reasons, of workers affected by the measures derived from this RED Mechanism during the two years following the end of the validity of these measures'.

Ordinance 1/2025, of 28 January, regulating the controlled testing environment for innovative projects in the city of Madrid.

The purpose of the Ordinance is to regulate a controlled testing environment - defined as a physical or virtual space 'controlled and delimited in which each project will be carried out, under the conditions determined in each access authorisation' and known internationally as a 'regulatory sandbox' - 'that allows innovative projects and tests of a temporary nature to be carried out in public spaces owned by the municipality within the municipal area of Madrid' (Article 1). The activity of the Madrid regulatory sandbox promotes research and innovation and social, economic and environmental sustainability, among other things. Sustainable mobility is one of the areas to which projects requesting access to the controlled testing environment must relate (Article 2).

Administrative authorisation will be required to access the controlled testing environment (Article 6). Projects must, among other things, consist of an urban innovation that represents an advance over the state of the art and responds to the economic, environmental and social challenges facing Madrid, and promoters must have the necessary resources to carry out the tests (Article 7), without prejudice to other personal and material resources that may be provided by the competent bodies (Article 5). The minimum conditions to be included in the access authorisation include, among others, i) the guarantee arrangements, ‘which shall include civil liability insurance for the amount to be determined’ and, if the project affects municipal property or infrastructure, ‘shall include a guarantee for the amount to be determined’, and ii) ‘where applicable’, confidentiality clauses relating to “intellectual property rights or trade secrets that may be affected during the performance of the tests” (Article 12(3)).

Royal Decree-law 3/2025, of 1 April, establishing the programme of incentives linked to electric mobility (MOVES III) for the year 2025.

Royal Decree-law 3/2025 regulates the MOVES III Programme, which will run from 1 January to 31 December 2025 with a budget of

400 million euros and will be governed by Royal Decree 266/2021 of 13 April. Actions eligible for subsidy include those set out in Article 13 of Royal Decree 266/2021, i.e. the purchase of electric vehicles (EVs) and the deployment of EV charging infrastructure. Unlike the aid provided under the *Mueve Madrid* Plan, discussed in point 1 of this section, MOVES III aid is not compatible with other national or international, public or private subsidies or aid for the same purpose².

Royal Decree-law 3/2025 introduces amendments to the Corporate Income, Non-Resident Income and Wealth Tax Acts Amendment and Personal Income Tax Act 35/2006 of 28 November, which allow taxpayers to deduct 15% of the purchase price of a new EV until 31 December - when it is purchased or a deposit of at least 25% of the purchase price of the vehicle is made - under the terms provided and with respect to vehicles that meet the detailed requirements, and 15% of the amounts paid until 31 December 2025 for the installation in a property owned by them of battery charging systems for EVs not attached to a business activity, in accordance with the established requirements. The maximum deduction base will be €20,000 and €4,000, respectively. It is important to note that the right to the deduction will be lost if, after the acquisition of the new EV or the installation of —Constitution and 151(1) of the Standing Orders of the Lower House.

Europe

Directive (EU) 2024/2881 of the European Parliament and of the Council of 23 October 2024 on ambient

air quality and cleaner air for Europe (recast)

² Article 15, Royal Decree 266/2021.

The new Directive recasts Directives 2004/107/EC³ and 2008/50/EC⁴, which will be repealed with effect from 12 December 2026 (recital 1, Article 31). It establishes “for an interim period limit values and target values should be identical to those set under the repealed Directives until the new limit values apply”⁵ to allow Member States to prepare for the changes and to “ensure legal continuity”⁶. The new Directive takes into account the September 2021 update of the WHO air quality guidelines.

The ‘air quality roadmap’, defined as the “air quality plan, ahead of the attainment deadline of limit values and target values, that sets out policies and measures in order to comply with those limit values and target values within the attainment deadline”, will be necessary for a Member State to postpone the deadline for compliance with the obligation to apply certain limit values, in accordance with the conditions set out in Article 18. Air quality plans and air quality roadmaps “shall contain at least”, information on relevant abatement measures, including those to reduce vehicle emissions “through retrofitting with zero emissions powertrains and emission control equipment”, for which it indicates that “the use of economic incentives to accelerate take-up shall be considered”, and measures “to limit transport emissions through urban planning and traffic management”, including urban vehicles access restrictions schemes, including LEZs and zero-emission zones, and the establishment of car-free neighbourhoods and streets.

The new Directive also imposes an obligation on Member States to ensure that natural persons have the right to claim and obtain compensation for damage to human health caused by a violation of the national rules transposing Articles 19(1) to (5) and Article 20(1) and (2) “committed intentionally or negligently by the competent authorities” (Article 28). It remains to be seen how the new Directive will be transposed into Spanish law.

Regulation (EU) 2024/2822 of the European Parliament and of the Council of 23 October 2024 amending Council Regulation (EC) No 6/2002 on Community designs and repealing Commission Regulation (EC) No 2246/2002 (Text with EEA relevance) and Directive (EU) 2024/2823 of the European Parliament and of the Council of 23 October 2024 on the legal protection of designs (recast) (Text with EEA relevance).

We refer you to the publication in our Intellectual Property section entitled ‘*La reforma del Derecho europeo sobre el diseño industrial*’, which addresses the repair clause, relevant to the automotive sector.

Proposal for a Regulation of the European Parliament and of the Council on circularity requirements for vehicle

³ Directive 2004/107/EC of the European Parliament and of the Council of 15 December 2004 relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air.

⁴ Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe.

⁵ Recital no. 25.

⁶ Ibid.

design and on management of end-of-life vehicles, amending Regulations (EU) 2018/858 and 2019/1020 and repealing Directives 2000/53/EC and 2005/64/EC (COM(2023) 451 final — 2023/0284(COD)).

The Proposal for a Regulation presented by the Commission in July 2023 is currently undergoing its first reading under the ordinary legislative procedure in the European Parliament's Committee on the Environment, Climate and Food Safety and in the Committee on the Internal Market and Consumer Protection. The deadline for tabling amendments to the text was 19 February. The co-rapporteurs have proposed adapting the objectives of the Proposal "in accordance with what is feasible for the industry"⁷.

The Proposal is based on an assessment of existing legislation — Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles (ELV Directive) and Directive 2005/64/EC of the European Parliament and of the Council of 26 October 2005 on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability (Directive 2005/64) —⁸. Of note is the extension of its scope to include, among others, buses, lorries, two-wheeled motorcycles, including those with sidecars, motor

tricycles and light and heavy quadricycles, as well as to vehicles and end-of-life vehicles of categories M1 and N1⁹. Also noteworthy is the regulation of the minimum recycled content in vehicles, whereby at least 25% of the plastic must come from recycling and 25% of this must come from end-of-life vehicles¹⁰. The Commission is empowered to adopt delegated acts to establish the minimum percentage of recycled steel from post-consumer steel and other metal waste. Also of note are the conditions for the export of end-of-life vehicles and the regulation of shipments of ELVs for treatment outside the EU, imposing compliance obligations on both waste management operators and the exporter¹¹. As regards batteries, although it does not regulate, among other aspects, end-of-life batteries, which are regulated by their specific regulation¹², it contains provisions on the removal of batteries from ELVs to ensure their reuse or recycling in accordance with such specific regulation.

Strategic dialogue on the future of the European automotive industry: Proposal for a Regulation of the Parliament and of the Council amending Regulation (EU) 2019/631 to include an additional flexibility as regards the calculation of manufactu-

⁷ Draft European Parliament legislative resolution, Explanatory statement.

⁸ EUR-Lex, Proposal for a Regulation, Explanatory Memorandum. Available at the following [link](#).

⁹ COMPARE THE PROPOSAL FOR A REGULATION, ARTICLE 2, WITH THE ELV DIRECTIVE, ARTICLE 3, AND WITH DIRECTIVE 2005/64, ARTICLE 2.

¹⁰ Proposal for a Regulation, Article 6 and Recital 19. European Commission, End-of-Life Vehicles. Available at the following [link](#).

¹¹ See, Proposal for a Regulation, Articles 34 and 36.

¹² Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC (Text with EEA relevance).

Manufacturers' compliance with CO₂ emission performance standards for new passenger cars and new light commercial vehicles for the calendar years 2025 to 2027; Industrial Action Plan, and public consultation

On 1 April the European Commission (Commission) presented its proposal for a Regulation of the Parliament and of the Council amending Regulation (EU) 2019/631 (Regulation 2019/631) to include an additional flexibility as regards the calculation of manufacturers' compliance with CO₂ emission performance standards for new passenger cars and new light commercial vehicles for the calendar years 2025 to 2027 (Proposal). This Proposal implements the targeted amendment to Regulation 2019/631 included in the Industrial Action Plan for the European automotive sector¹³, presented on 5 March and announced by the President of the Commission on 3 March following the second meeting of the Strategic Dialogue on the future of the European automotive industry, launched on 30 January. The amendment, if approved by the co-legislators, would determine that compliance with the target would be assessed over the three-year period 2025-2027 to allow manufacturers to offset any shortfall in one or two years with over-achievement in one or two other years, while maintaining the 2025 target.

The European Commission also included in the Industrial Action Plan that it will accelerate work on the foreseen review of Regulation 2019/631, a review that it says will take into account all relevant technological developments and “the importance of an economically viable and socially fair transition towards zero-emission mobility”. On batteries, the Plan includes the Commission's support for the European value chain of next-generation batteries, including recycling, and says that European content requirements for both battery cells and electric vehicles sold in the EU will be addressed in future legislation.

The public consultation launched in the framework of the Strategic Dialogue ended on 13 February. Spain provided the highest number of feedback instances: 1,374 (72.09%). It was followed by Germany with 107 feedback instances. By category of respondent, the majority of feedback instances came from EU citizens (1,466, 76.92%) followed by business associations (154, 8.08%). Through the public consultation, participants were invited “to share their views and information on the main themes on which urgent action is needed to give the automotive industry a solid future in Europe and identify potential solutions” in a context marked by the challenges faced by the sector, which is calling for, among others, the relaxation of emission regulations.

Public consultation

EU competition rules relating to vertical agreements in the automotive sector

The public consultation on Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to

¹³ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the European Committee of the Regions, Industrial Action Plan for the European automotive sector. Available at the following [link](#).

categories of vertical agreements and concerted practices in the motor vehicle sector (the Regulation) and Supplementary Guidelines as amended in April 2023¹⁴ is open from 28 February until 23 May. The public consultation takes place in the context of the evaluation of the Regulation before its expiry in May 2028. The European Commission explains that the

evaluation of the Regulation “complements” the efforts of the Strategic Dialogue on the future of the European automotive industry, launched on 30 January, and its Action Plan “by ensuring a competitive automotive aftermarket”. All stakeholders are invited to express their views.

News

Draft Mobility (Region of Madrid) Bill

From 20 January to 14 February, the public consultation on the Draft Mobility (Region of Madrid) Bill was open. The regional government considered it necessary to pass a law “that establishes the legal framework for the implementation of mobility policies” in order to solve, among other things, the problem of the “harmonisation of the mobility policies of the municipalities of the Madrid region”. For this reason, the future law aims to be the “strategic framework” for a “sustainable mobility model”, addressing “transport and mobility from a cross-sectoral and integrating perspective”. It is provided that public-private working groups will be formed to work on the areas that the law will take into account, including economy and competitiveness, environment, digitalisation, and public and freight transport¹⁵.

The future Mobility Act aims, among other things, to establish harmonised criteria especially with regard to the implementation of low-emission zones and to include “measures aimed at the

promotion of responsible and safe mobility” that integrates the different modes of transport. Measures to promote “efficient and safe mobility (smart mobility)” include the development of MaaS applications for users (*mobility as a service*) and electric mobility and the distribution of charging points.

Our team will closely follow the evolution of the draft bill given its expected importance for mobility in the Region of Madrid.

Presentation of the *Clean Industrial Deal* for EU competitiveness and decarbonisation

On 26 February the European Commission presented its *Clean Industrial Deal*, described as an “bold business plan” to support the competitiveness and resilience of European industry. According to the Commission, the Deal will “accelerate decarbonisation, while securing the future of manufacturing in Europe” in a context marked by high energy prices “and fierce and

¹⁴ European Commission, Commission launches public consultation on antitrust rules for motor vehicle sector. Available at the following [link](#).

¹⁵ Community of Madrid, Ley de Movilidad de la Comunidad de Madrid. Available at the following [link](#).

often unfair global competition”¹⁶. The Deal focuses on clean technology and energy-intensive industries. Circularity, to maximise EU’s resources and reduce “overdependencies” on third country suppliers for raw materials, is a “central element” of the Deal. Among the “business drivers” for the prosperity of industry in the EU is the “financing of the clean energy transition” whereby the Deal “will mobilise over **€100 billion** to support EU-made clean manufacturing”, an amount that “includes an additional **€1 billion** guarantees under the current Multiannual Financial Framework”¹⁷. The Commission explains that the Deal serves as a framework to tailor action in specific sectors. It refers to the Industrial Action Plan for the European automotive industry, presented on 5 March, and to an Action Plan on steel and metals, which is part of the Strategic Dialogue on the future of the steel sector launched by the President of the European Commission on 4 March¹⁸.

UNECE to accelerate decarbonization of road transport by developing harmonised provisions for electric vehicle and hydrogen fuel cell retrofit systems.

On 27 March, the United Nations Economic Commission for Europe (UNECE) reported that it would accelerate the decarbonisation of road transport through the development of harmonised provisions for electric vehicle and hydrogen fuel cell retrofit systems. To this end, it has set up an informal working group. The work is being led by Spain and France with the support of Germany, Sweden, the UK, Japan and the European Commission. The harmonised regulatory framework would “ensure minimum requirements for retrofit systems, provide robust performance requirements for converted vehicles and support the deployment of retrofit systems that could be installed on many vehicles in the countries that adopt the developed requirements”. The working group’s activities will focus on all vehicle categories, from two- and three-wheelers to heavy-duty vehicles, and is expected to establish harmonised requirements for targeted vehicle categories and powertrain types by 2027.

In the Industrial Action Plan, discussed under point 4 on legislation in Europe, above, the Commission communicated that it will support the development of a Regulation in the framework of the UNECE, harmonising the type-approval of retrofitted conventional heavy-duty vehicles, especially buses, at the global level.

¹⁶ European Commission, *A Clean Industrial Deal* for competitiveness and decarbonisation in the EU. Available at the following [link](#).

¹⁷ Idem. Emphasis in original.

¹⁸ European Commission, President von der Leyen launches Strategic Dialogue on the Future of the Steel sector. Available at the following [link](#).

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