

# Newsletter

December – January 2019/2020

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## European road transport in 2020 - an outlook

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Transport policy is a special field in many respects. In contrast to other policy fields, transport policy is characterised in particular by its cross-sectional and its multi-level character. The cross-sectional character describes the interdisciplinary nature of the field. Transport policy is difficult to understand as an exclusive, self-contained field. It is a field which is significantly influenced by various other policy fields. Environmental policy, social policy, technology policy, economic policy, competition policy and many other fields are important components of transport policy. The field also has a multi-level character. Transport policy is no longer a field hierarchically determined by the nation state. Many different state, civil society and economic actors at all levels (local, national, regional) have their role and say in transport policy processes.

This special role of the transport sector has become increasingly important over the last decade. For example, there has been a massive increase in awareness of the role of transport in the climate and environmental sector. New technologies and advances in the field of electric mobility and autonomous driving are expressions of this new awareness in the transport sector. But the last decade has also revealed the massive problems and challenges that still need to be solved. The second half of the last decade in particular has shown that we are only just beginning to solve environmental problems or introduce new drives and technologies. But what challenges await us now in the new decade? What still lies on the desks of the EU institutions? Here we want to give a brief transport policy outlook into the beginning of the new decade.

### **Environment, climate and energy**

One of the new Commission's main packages of measures was presented at the end of last year. The European Green Deal is designed to make Europe the world's first climate-neutral

continent by 2050, something the new Commission also describes as the greatest challenge and opportunity of our time. The measures, which are accompanied by an initial roadmap of key policy measures, range from an ambitious reduction in emissions to investment in cutting-edge research and innovation and the preservation of Europe's natural environment. Supported by investment in green technologies, sustainable solutions and new businesses, the Green Deal can be a new EU growth strategy. The involvement and commitment of the public and all stakeholders is crucial to the success of the Green Deal. The Commission stresses that the package makes the transition fair and social. With regard to transport, the Commission plans to revise the CO<sub>2</sub> standards for cars and vans to ensure "a clear path towards emission-free mobility from 2025". The new CO<sub>2</sub> standards, which the EU institutions have just won a tough battle for in April 2019, are to be put back on the table this year. But it remains to be seen whether the CO<sub>2</sub> reduction targets will be the focus of attention or whether technical aspects will be taken into account. It can be expected that this will be a tough battle between various governmental and non-governmental actors. The Commission also plans to publish a climate law within the first 100 days. You can find more on the European Green Deal below.

It should also be noted that EU legislation always includes built-in review clauses obliging the Commission to carry out a stocktaking exercise at regular intervals. In 2023, for example, passenger car legislation will be reviewed, and its effectiveness assessed. The Commission could decide at that time to amend the targets for 2025 and 2030.

At the heart of transport policy debates are and will remain the drive technologies of the past and the future. Even though the Commission officially takes a technology-neutral approach, most of the measures to promote low-emission and zero-emission vehicles undoubtedly focus on electric mobility. Measures such as the Commission's investments in the European Battery Alliance are also designed to make

Europe competitive again in the future. It is clear that of all future drive technologies, electromobility is the only one that is already market-ready. Nevertheless, other technologies must not be allowed to fall behind.

At the end of last year, for example, the European Automobile Manufacturers Association (ACEA), Hydrogen Europe and the International Road Transport Union (IRU) issued a joint call for the accelerated development of hydrogen refuelling infrastructure throughout the EU. Against the background of the general goal of decarbonising transport, the three associations emphasise that fuel cell electric vehicles can make a positive contribution. Fuel cell vehicles emit no emissions at the tailpipe and with sustainable hydrogen production it is also possible to significantly reduce CO<sub>2</sub> emissions. Similarly, hydrogen technology acts as a bridge between the energy and transport sectors (sectoral integration) and offers solutions for better integration of surplus renewable energies such as wind and sun ("power to hydrogen"). The growing demand for renewable and low-carbon hydrogen in many industries will increase supply and reduce costs. The associations also emphasise that promoting the hydrogen industry would strengthen Europe's competitiveness in the long term and that this would also mean growth and jobs.

### **Digitisation, connectivity and vehicle data**

Another core topic of the next decade will be the digitalisation and networking of transport. Not only does the development of suitable technology and infrastructure urgently require the attention of the European institutions, but also and in particular the creation of a legal framework for handling vehicle data for the protection and welfare of the consumer. The current handling of vehicle data for the benefit of car manufacturers inevitably harms consumer welfare. This imbalance needs to be remedied by means of appropriate, uniform rules for handling vehicle data. A move by the Commission is long

overdue. In general, a legal framework should ensure and promote transparency in the processing of vehicle data, the effective guarantee of freedom of choice and the right to data transferability, access to vehicle data on the basis of the FRAND principle (Fair Reasonable and Non-Discriminatory), and the maintenance of safety and the promotion of innovation. For example, in May 2019, a large majority of the members of the Transport Committee of the European Parliament recently called for the drafting of a bill to regulate access to vehicle data, among other things. The report explicitly emphasises that access to the data must be fair, timely and unlimited. Originally, the Commission was supposed to present the draft law by the end of the year, but this did not happen. Now that the new Commission has taken up its work, however, we can now finally expect to see a corresponding move soon.

### **Tolling systems**

The debates on the euro vignette and the abolition of time-based vignette systems will also remain an issue in 2020 and beyond. The core of the proposal was a two-stage abolition of time-based vignettes. Instead, the Commission argued for a digitised distance-based toll based on the user pays principle. According to this principle, the distances travelled by road users on the relevant routes should be measured and then used as the basis for calculating the toll. Charging based on distance should better reflect the actual level of use, emissions and pollution. A distance-based toll should thus be introduced for trucks by 2023 and then for all 4 vehicles of "other categories", including passenger cars, by 2027. However, despite initial agreement, no common position has yet been adopted in the Council. In addition, even within the highest judicial body of the EU, the issue of car tolls is highly controversial and leads to diametrically opposed positions. The discrepancy between the opinion of the respected Advocate General Nils Wahl in early 2019 and the recent ruling of the Grand

Chamber in case C-591/17 Austria/Germany shows the current regulatory mumbo jumbo.

## Road and vehicle safety

Vehicle safety will also remain a recurring theme. However, fundamental new regulations were only agreed last year. For example, from mid-2022, all new cars entering the EU market must be equipped with modern safety systems. Following an agreement with the European Parliament in March 2018, the Council adopted a directive to significantly reduce the number of road accident victims. The new regulation requires the introduction of around 30 different technologies or systems in new vehicles of different types. Under the agreement, most technologies will become mandatory in May 2022 for new vehicle models and in May 2024 for existing models. The European Commission expects that the proposed measures will help save more than 25,000 lives and prevent at least 140,000 serious injuries by 2038.

### Further Links:

- [EAC Position Paper: Connected Cars](#)
- [EAC Position Paper: Uniform Car Toll Rules](#)

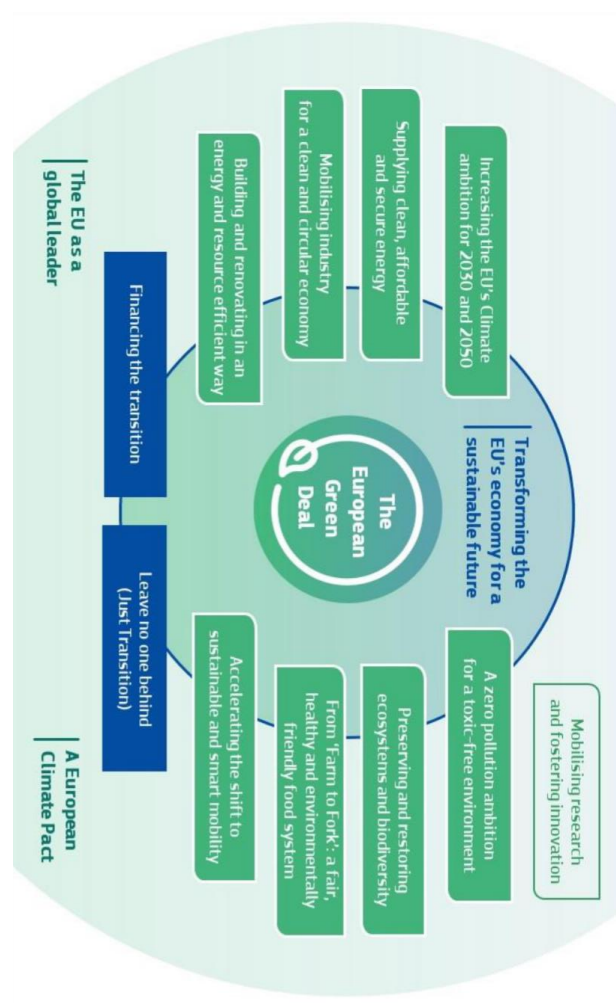
## The European Green Deal

On 11th December the new European Commission published the "European Green Deal" (COM(2019) 640). The Green Deal “resets the Commission’s commitment to tackling climate and environmental-related challenges [...] It is a new growth strategy that aims to transform the EU into a fair and prosperous society, with a modern, resource-efficient and competitive economy where there are no net emissions of greenhouse gases in 2050 and where economic growth is decoupled from resource use. It also aims to protect, conserve and enhance the EU's natural capital, and protect the health and well-being of citizens from environment-related risks and impacts. At the same time, this transition must be just and inclusive.”

The Commission's published Communication on the Deal sets out an initial roadmap of the main

strategies and measures needed to achieve the European Green Deal, but remains open to future relevant and appropriate updates. The Commission stresses that all EU policies and strategies must contribute to the achievement of the objectives of the European Green Deal. Among other things, the deal is seen as part of the strategy for implementing the United Nations' Agenda 2030 and the goals for sustainable development.

The Commission intends to propose the first European “Climate Law” by March 2020 “to set out clearly the conditions for an effective and fair transition, to provide predictability for investors, and to ensure that the transition is irreversible.” The objective of climate neutrality by 2050 is thereby enshrined in legislation, while ensuring that future EU policies contribute positively to achieving this goal.



## The Green Deal and mobility

In section 2.1.5. of the Communication, the Commission sets out its priorities for mobility. It notes that the transport sector accounts for a quarter of greenhouse gas emissions in the EU and that the trend is still pointing upwards. In order to achieve the goal of climate neutrality by 2050, transport-related emissions must be reduced by 90 per cent by 2050. Accordingly, the Commission announces in the deal to adopt a strategy for sustainable and intelligent mobility before the end of this year. The deal clearly focuses on the expansion of multimodal transport concepts. “As a matter of priority, a substantial part of the 75% of inland freight carried today by road should shift onto rail and inland waterways.” Similarly, the focus should increasingly be on automated and connected multimodal mobility.

The effects of transport services on the environment and health should be reflected in prices, which means, among other things, the abolition of subsidies and tax exemptions on fossil fuels. In view of the current poor state of negotiations on road charging and the Eurovignette Directive, the Commission once again emphasises that it is willing to retain the original proposal for the time being, but “is ready to withdraw it if necessary and to propose alternative measures.” The production and deployment of sustainable alternative transport fuels should also be ramped-up. The Commission is prepared to support the development of public recharging and refueling stations where gaps exist, for example in long-distance transport and in less densely populated areas.

In order to counteract congestion in cities and the resulting damage to the environment and health, the Commission intends to propose stricter limits for air pollutant emissions from vehicles with internal combustion engines. Although the negotiations on the new CO<sub>2</sub> standards were only recently concluded, the Commission intends to renegotiate them. They will propose to revise the legislation on CO<sub>2</sub>

emission standards for passenger cars and light commercial vehicles by June 2021.

### Further Links:

- [Communication and roadmap on the European Green Deal](#)
- [More information on the Deal](#)

## Overview of relevant EU case law

In recent months, there have been repeated judgments and legal developments relevant to the European transport sector. We would like to briefly summarise the most relevant cases again here:

### Use of a Vehicle (C-100/18; C-648/17)

An important point of discussion in European case law in recent months has been the definition of the term “use of a vehicle” within the meaning of the Motor Insurance Directive. The Directive, published in the Official Journal in 2009, will be revised from 2018 on the basis of a proposal from the Commission. The current version uses the wording “insurance against civil liability in respect of the use of motor vehicles”, which explicitly prescribes the “use” of a vehicle. In the past, however, this wording increasingly led to legal uncertainty, as the scope of the term “use” was not defined. Consultations and legal judgements (see below) have increasingly expanded and defined the term and the Directive should now be adapted.

In the June-July 2019 Newsletter, we had already reported on a ruling by the European Court of Justice on Case C-100/18 regarding the interpretation of the term “use of a vehicle”. In August 2013, a vehicle parked in the garage of a single-family house that had not been driven for more than 24 hours caught fire due to a technical defect in the track. The fire caused damage to the house amounting to around 45,000 euros, which was covered by the building insurance. However, the insurance company wanted to get the money reimbursed by the motor vehicle liability insurance, as the damage was caused by the “use

of a vehicle”. The case ended up in court. However, the Spanish courts were unable to reach a final decision on how to interpret Article 3 of Directive 2009/103/EC on insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability and what is covered by the term “use of a vehicle”. On 20 June 2019, the ECJ ruled that the Directive “must be interpreted as meaning that a situation such as that at issue in the main proceedings, in which a vehicle parked in a private garage of a building, used in accordance with its function as a means of transport, has caught fire, giving rise to a fire which originated in the electrical circuit of that vehicle and caused damage to that building, even though that vehicle has not been moved for more than 24 hours before the fire occurred, falls within the concept of ‘use of vehicles’ referred to in that provision.”

C-648/17 is another case pending in this case and occurred on 24 October 2008, when a passenger of one of the first cars parked in a parking lot of a supermarket in Latvia opened his car door and scratched the side of a second car parked nearby. The driver of the first car admitted his guilt and confirmed that his passenger had scratched the side of the second car with the back door of the first car. The owner of the second car then made a claim on his own insurance. After deducting the excess, his Latvian insurer paid him a sum of only around 67.47 Euros. The insurer of the second car then decided to ask the insurer of the first car for reimbursement of these costs. However, the insurer of the second car refused to reimburse the 67.47 Euros because an accident that occurred when both cars were stationary was not an “insurable event” in the sense of Latvian law. The case went through all instances and the Latvian Supreme Court finally turned to the CJEU, as it was not possible to clarify conclusively whether the term “use of a vehicle” covers the opening of the doors of a stationary vehicle; and if so, whether it covers a situation in which damage to property is caused by the use of the vehicle by a passenger. Similarly to the previous case, the Court ruled that it “must be

interpreted as meaning that the concept of ‘use of vehicles’, set out in that provision, covers a situation in which the passenger of a vehicle parked in a car park, in opening the door of that vehicle, scraped against and damaged the vehicle parked next to it.”

Further Links:

- [Overview Review Motor Insurance Directive](#)
- [Case C-648/17](#)
- [Case C-100/18](#)

### **Car Toll (C-591/17)**

Another central case last year was the lawsuit filed by Austria, against Germany because of the planned German car toll. We had already described this case in detail in our June-July 2019 newsletter. On June 18, 2019, the ECJ defined the toll as discriminatory. The ECJ ruled that “the infrastructure use charge, in combination with the relief from motor vehicle tax enjoyed by the owners of vehicles registered in Germany, constitutes indirect discrimination on grounds of nationality and is in breach of the principles of the free movement of goods and of the freedom to provide services. As regards the prohibition of discrimination on grounds of nationality, the Court finds that the effect of the relief from motor vehicle tax enjoyed by the owners of vehicles registered in Germany is to offset entirely the infrastructure use charge paid by those persons, with the result that the economic burden of that charge falls, de facto, solely on the owners and drivers of vehicles registered in other Member States.”

Further Links:

- [Case C-591/17](#)

### **Limitation Period (C-149/18)**

In another case and ruling (C-149/18), the case concerned the vehicle of a Portuguese injured party, which was damaged in an accident in Spain in August 2015. In November 2016, he initiated proceedings in Portugal for reimbursement of his

uninsured losses. Under Portuguese law, the limitation period is 3 years. Under Spanish law, which follows the EU Rome II Regulation, the limitation period is 1 year. The resulting problem related to the interpretation of the European Regulation on the law applicable to non-contractual obligations (Rome II), and the extent to which a national law provision (Portuguese law) can be considered to be mandatory. Overriding mandatory rules are those rules which are mandatory even if they do not form part of the law applicable to the dispute. They override the choice of law made by the parties or which results from the application of the conflict rules that have determined the law applicable to the legal relationship. The Court ruled that the Rome II Regulation must be interpreted as meaning that “a national provision, such as that at issue in the main proceedings, which provides that the limitation period for actions seeking compensation for damage resulting from an accident is three years, cannot be considered to be an overriding mandatory provision, within the meaning of that article.” That is only possible if the “court hearing the case finds, on the basis of a detailed analysis of the wording, general scheme, objectives and the context in which that provision was adopted, that it is of such importance in the national legal order that it justifies a departure from the law applicable, designated pursuant to Article 4 of that regulation.” Furthermore, the scheme in question must not have been harmonized by secondary EU legislation.

Further Links:

- [Case C-149/18](#)

# Calendar

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## Meeting Dates

### Council

Transport, Telecommunications and Energy Council 04-05/06/2020

Competitiveness Council 27/02/2020

Council of Justice and Home Affairs 12/03/2020

Council of Environment 05/03/2020

Plenary 13-16/02/2020 ([Agenda](#))

### Committees

Environment (ENVI) 20-21/01/2020 ([Agenda](#), tba)

Internal Market / Consumer (IMCO) 22-23/01/2020 ([Agenda](#))

Justice & Home Affairs (LIBE) 13/01/2020 ([Agenda](#))

Transport (TRAN) 20-21/01/2020 ([Agenda](#))

## Events (Brussels)

13/02/2020 [3rd Stakeholder workshop of the joint CAD network](#)

03/03/2020 [The 5th Annual Future of Transport Conference](#)

## EAC-Events

18-19/03/2020 EAC Spring Meeting in Berlin

27/10/2020 EAC Autumn Meeting in Brussels

28/10/2020 EAC Lunch Debate