

HARMONIZATION OF AUTOMOBILE EMISSION STANDARDS UNDER EU LAW

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Abstract: The road transport sector remains a major contributor to smog that is of particular concern in big European cities. The EU member states are to manage air quality in line with in the Air Quality Directive (dir. 2008/50/EC) that put forward local air quality targets. For this purpose, there are specific legal instruments to be applied by local authorities i.e. low emission zones, pedestrian zones, 'car-free days', etc. In joined cases: T-339/16, T-352/16, T-391/16 Paris, Bruxelles and Madrid successfully questioned the EU harmonising legislation (reg. 2016/646/EU) on pollutant emissions from light passenger and commercial vehicles.² This regulation was intended to facilitate the sale of motor vehicles in the EU market, however it was in compliance with Euro 6 standard (reg. 715/2007/EC). This work revolves around the implicit conflict between regulatory autonomy of the European cities to enact domestic legislation in order to comply with their obligations under Air Quality Directive and on the other side - Framework Directive for the Approval of Motor Vehicles (dir. 2007/46/EC) and its secondary 'regulatory acts' that all together constitute the automotive market surveillance system of the European Commission. The article concludes that, cities may become champions for environmental protection, (since they already have standing under Article 263 (4) of the Treaty on the Functioning of the EU), if the Commission fails to impose stringent automobile emission standards.

Keywords: Air Quality Directive, automotive sector emissions, Framework Directive for the Approval of Motor Vehicles, low emissions zone, regulatory powers of the cities JEL Classification: K23, K32, K33

INTRODUCTION

1. AMBIENT AIR QUALITY MANAGEMENT

Ambient air quality management obligations of state authorities stem from both international and EU, as well as domestic regulations. Following the Convention on Long-Range Transboundary Air Pollution³ its member states report their annual emissions to the UNECE.⁴ In line with the EU Air Quality Directive⁵ – the EU member states are to manage

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² The final decision of the TJEU has not been known yet, since the case was appealed: Case C-177/19 P, *Allemagne - Ville de Paris and Others v Commission*. Problem solution demonstrates considerable proximity to the position of the General Court of the EU in commented cases: T-339/16, ... *Ville de Paris, Bruxelles, Madrid v. Commission*, however, with additional critical references, relating to the EU environmental law studies. Methodology applied was based on the legal dogmatic analysis of the relevant provisions of EU law and official documents.

³ Geneva Convention, 1979. In: *UNECE* [online]. [2021-02-09]. Available at: <<https://unece.org/convention-and-its-achievements>>.

⁴ United Nations Economic Commission for Europe. In: *UNECE* [online]. [2021-09-02]. Available at: <<https://www.unece.org/info/ece-homepage.html>>; European Union emissions inventory report 1990-2018 under the UNECE Convention on Long-Range Transboundary Air Pollution (LRTAP), EEA Report, 05/2020, European Environment Agency, Luxembourg 2020.

⁵ 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, O.J. L 152, 11.06.2008, p. 1.

air quality. There are specific legal instruments, settled there, to be applied by local authorities i.e. air quality plans, reference measurement methods, quality assessment, etc. Domestic public policy regarding air pollution control by the city government is accommodated by the application of the principle of decentralization through regulation. The city government formulates public policies to improve the ability of the municipal community to avoid air pollution and reduce damage to public health caused by air pollution. At the same time cities carry out activities in planning, and controlling air environmental policy programs that lead to achieving environmental quality.⁶ Since several years, cities worldwide have started to act on their behalf to curb traffic-related risks by levying urban road tolls, by creating traffic-limited zones, by traffic restrictions or by introducing low emission zones. In the case of low emission zones, the most polluting vehicles are either not admitted to the specific zones or they are subjected to tolls to enter them. The objective of applying low emission zones is to bring down local PM10, PM 2.5 and NOx emissions, as well as the secondarily formed street-level ozone – O₃. Most of these zones affect heavy-duty vehicles, while a growing number of cities also target passenger cars and light-duty commercial vehicles. In European cities, the criteria for low emission zones entrance are based upon the Euro emission standards, (the year of a car first registration as a proxy), or by means of the presence of retrofitted emission control devices,⁷ in most cases DPF (diesel particulate filter).⁸ In 2016 Europe counted more than 200 low emission zones, mostly in Germany and Italy.⁹

2 EMISSIONS CONTROL UNDER THE EU AUTOMOTIVE SECTOR LAW

To improve ambient air quality, regulations on vehicle exhaust emissions have been progressively implemented by EU member states' governments forcing the automotive industries to improve their products in terms of hazardous emissions. Vehicle emissions for European passenger cars have been regulated since early 70s XX, and by means of the Euro emission standards since 1992.¹⁰ The European Union has challenged the domestic automotive industries to develop auxiliary emission control devices (AECD) and strategies for their cars to pass the type-approval process. The latter is based on the laboratory test New European Driving Cycle (NEDC test approval procedure).¹¹

⁶ PURWADI, A., SUHANDI, S., ENGGARSASI, U. Urban Air Pollution Control Caused by Exhaust Gas Emissions in Developing Country Cities in Public Policy Law Perspective. *International Journal of Energy Economics and Policy*. 2020, Vol. 10, No. 1, p. 31.

⁷ Retrofits can be very effective at reducing emissions, eliminating up to 90 percent of pollutants in some cases. Some examples of emission control devices used for diesel retrofit include: diesel oxidation catalysts, diesel particulate filters, NOx catalysts, selective catalytic reduction, and exhaust gas recirculation.

⁸ HOOFTMAN, N., MESSAGIE, M., VAN MIERLO, J., COOSEMANS, T. A review of the European passenger car regulations – Real driving emissions vs local air quality. *Renewable and Sustainable Energy Reviews*. 2020, Vol. 86, p. 15.

⁹ In: *Urban Access Regulations in Europe* [online]. [2021-09-02]. Available at: <<http://urbanaccessregulations.eu>>.

¹⁰ BUKOWSKI, Z. Prawne uwarunkowania ochrony przed smogiem pochodzącym z emisji ze źródeł liniowych na przykładzie transportu drogowego. *Europejski Przegląd Sądowy*. 2017, Vol. 7, pp. 52–53.

¹¹ European Environment Agency. 2020. Flexibilities in the NEDC test approval procedure. In: *European Environment Agency* [online]. [2020-03-04]. Available at: <<https://www.eea.europa.eu/media/infographics/flexibilities-in-the-nedc-test/view>>.

However, substantive differences between the emissions emitted by light duty vehicles during a homologation tests on the NEDC and in practice on public roads prompted the European Commission to enact new regulation to close the gap between emissions reported by vehicle manufacturers and those actually emitted, especially in relation to NO_x. Besides driver's behaviour and ambient conditions, this large discrepancy is a combination of two key effects – 1) the laboratory test cycle itself not being representative of real driving and - 2) the load applied to the vehicle in real “on the road” conditions.¹² The solution to minimize this discrepancy (between homologation testing and real driving with respect to emissions) has been - to move part of the homologation requirement of new light duty vehicles from the laboratory to public roads. Additionally, lots of vehicles (for sale in Europe) are homologated outside of Europe, including Australia. Therefore, extra difficulties in meeting the driving boundary conditions on public roads outside Europe have to be considered.

The European type approval process has been constantly redesigned to model on North American standards, especially after the so called ‘Dieselgate’ scandal concerning diesel passenger cars.¹³ Regulation 2016/427/EU¹⁴ imposing real driving emissions tests (RDE) and portable emissions measurement system (PEMS) was probably the biggest change to the EU emission rules for light duty vehicles since regulations of this sort were introduced. Studies have shown, with particular emphasis on diesel vehicles, that regulations of this sort should reduce NO_x emissions and therefore improve urban air quality.¹⁵ However, Framework Directive for the Approval of Motor Vehicles,¹⁶ like those preceding it, was primarily intended to facilitate the sale of cars coming from different member states. In the absence of such harmonising legislation, a fragmentation of the EU internal market due to disparities in the domestic requirements and controls governing the sale of cars would have persisted. The whole process of harmonising standards has been demanding, since Commission has to take into consideration environmental law, specifically air quality standards. It is not made easier by the fact that both air quality and the transport industry are represented by two different EU Commission departments, i.e. one for climate and one for the industry.

European Parliament in its Report on the inquiry into emission measurements in the automotive sector left no doubts that member states should take a more active part in the EU type-approval framework amendments and application.¹⁷ Large gaps between the NO_x

¹² BODISCO, T., ZARE, A. Practicalities and Driving Dynamics of a Real Driving Emissions (RDE) Euro 6 Regulation Homologation Test. *Energies*. 2019, Vol. 12, p. 2.

¹³ COGLIANESE, C., NASH, J. The law of the test: Performance-based regulation and diesel emissions control. *Yale Journal on Regulation*. 2017, Vol. 34, No. 1, pp. 33–90.

¹⁴ Commission Regulation (EU) 2016/427 of 10 March 2016 amending Regulation (EC) No 692/2008 as regards emissions from light passenger and commercial vehicles (Euro 6), OJ L 82, 31.3.2016, pp. 1–98.

¹⁵ BODISCO, T., ZARE, A. Practicalities and Driving Dynamics of a Real Driving Emissions (RDE) Euro 6 Regulation Homologation Test. *Energies*. 2019, Vol. 12, p. 3.

¹⁶ Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive), O.J. L 263, 9.10.2007, p.1.

¹⁷ European Parliament, 2017. Report on the inquiry into emission measurements in the automotive sector (2016/2215(INI)). In: *European Parliament* [online]. [2020-02-26]. Available at: <https://www.europarl.europa.eu/doceo/document/A-8-2017-0049_EN.html>.

emissions of most Euro 3-6 diesel cars measured with the NEDC laboratory test - that meet the legal emission limit, and their NOx emissions measured in real driving conditions - that exceed the limit, affect the vast majority of diesel cars. And they are not limited only to the Volkswagen vehicles equipped with prohibited defeat devices (!). These discrepancies contribute, to a large extent, to infringements by several member states of Air Quality Directive.¹⁸ The existence of these gaps, and their significant negative impact on attaining air quality objectives, in particular with regard to urban areas, has been known to the Commission, to the responsible member states' authorities and to many other stakeholders since at least 2004-2005 when reg. 715/2007/EC was being prepared.¹⁹

The EU's regulatory frameworks concerning both - automotive emissions control and climate policy in general, has constantly been heavily criticized.²⁰ In the light of this criticism, devolution of responsibilities between the EU member states' municipalities and European Commission seems to be very reasonable. In the New European Green Deal²¹ the Commission drew on the lessons learnt from the evaluation of the current air quality legislation.²² It proposed to strengthen provisions on monitoring, modelling and air quality plans to help local authorities achieve cleaner air.²³

3. THE EU EMISSIONS CONTROL STANDARDS V. DOMESTIC AIR QUALITY MANAGEMENT

The cities of Paris, Brussels and Madrid have, under their environmental and health protection powers, adopted measures to restrict vehicle traffic in order to combat the proven air pollution in their municipalities. These cities challenged regulation 2016/646/EU²⁴ to contest the introduction of new quantitative limits on NOx emissions

¹⁸ Air quality: Commission takes action to protect citizens from air pollution, Brussels 17.05.2018, IP/18/3450. In: *European Commission* [online]. [2021-09-02]. Available at: <https://ec.europa.eu/commission/presscorner/detail/en/IP_18_3450>.

¹⁹ These discrepancies have also been confirmed by a large number of studies done by the Joint Research Centre (JRC) since 2010-2011 and other researchers since 2004.

²⁰ BODISCO, T., ZARE, A. Practicalities and Driving Dynamics of a Real Driving Emissions (RDE) Euro 6 Regulation Homologation Test. *Energies*. 2019, Vol. 12; HOOFTMAN, N., MESSAGIE, M., VAN MIERLO, J., COOSEMANS, T. 2018; KURIEN, C., SRIVASTAVA, A. K., MOLERE, E. Emission control strategies for automotive engines with scope for deployment of solar based e-vehicle charging infrastructure. *Environmental Progress and Sustainable Energy*. 2020, Vol. 39, pp. 1-9; OBERTHÜR, S. Hard or Soft Governance? The EU's Climate and Energy Policy Framework for 2030. *Politics and Governance*. 2019, Vol. 7, No. 1, pp. 17–27.

²¹ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, The European Green Deal. Brussels, 11.12.2019 COM(2019) 640 final. In: *European Commission* [online]. [2020-02-26]. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0640&from=EN>>.

²² Commission Staff Working Document Fitness Check of the Ambient Air Quality Directives Directive 2004/107/EC relating to arsenic, cadmium, mercury, nickel and polycyclic aromatic hydrocarbons in ambient air and Directive 2008/50/EC on ambient air quality and cleaner air for Europe. SWD(2019) 427 final. In: *European Commission* [online]. [2020-02-26]. Available at: <https://ec.europa.eu/environment/air/pdf/ambient_air_quality_directives_fitness_check.pdf>.

²³ *Ibid.*, p. 17.

²⁴ Commission Regulation (EU) 2016/646 of 20 April 2016 amending Regulation (EC) No 692/2008 as regards emissions from light passenger and commercial vehicles (Euro 6), O.J. L 109, 26.4.2016, p. 1.

which were more relaxed than those laid down in annex I to regulation 715/2007/EC²⁵ – i.e. Euro 6 standard limits previously adopted by the Parliament and the Council. Those new limits, which were the result of the determination of the pollutant conformity factor (CF) in the challenged regulation, deprived the Euro 6 standard limits of their practical effect. Commission stated that the CF pollutant conformity factors applied were justified by the discrepancies observed between the data from the RDE tests (real driving emissions) and the data from the laboratory tests.²⁶ Commission's arguments seemed to be reasonable, however, relaxing the limits applied for the RDE (on the road) tests actually amounted to abandoning the Euro 6 limits that usually serve as a basic criterium for domestic low emission zones entrance.

Since, the cases discussed in this work, apparently deal with a dispute over authority in relation to regulating the circulation of vehicles, this paper considers two fundamental questions. Firstly, whether EU law restricts the powers of the member states' local authorities to limit vehicle traffic in order to combat the proven air pollution in their cities (?). Secondly, whether domestic traffic restrictions, relating to the level of vehicle pollutants, e.g. low emissions zones, pedestrian zones, 'car-free days' adopted by the public authorities and applied to vehicles (compliant with the EU standards, e.g. the challenged CF pollutant conformity factor), run counter to this EU law? To put it differently, whether local authorities violate EU law if they apply automotive emissions control standards only instructionally (as they wish), but at the same time, they fulfil all their ambient air quality management obligations under the Air Quality Directive.

3.1 Division of powers between the EU and its member states – subsidiarity & harmonisation level

Addressing the above mentioned problems entails the application of two paradigms. The first one is - the subsidiarity principle as a general principle of EU law governing the division of powers between the EU and its member states. The second paradigm, called - harmonisation level helps to assess the possible scope of intervention of domestic legislation that has been left, since the EU has already occupied some fields within the areas of shared powers - in this particular case: air quality protection in environmental law and automotive sector law, specifically free movement of goods in internal market law.

Article 5 TFEU²⁷ stipulates general principles for the relationship of the competences between the European Union and its member states. These include, the principle of conferral of limited powers, and the principles of subsidiarity and proportionality which are relevant for making use of competences already conferred to the Union. The principle of subsidiarity is meant to establish a legally binding limitation for implementing powers in favour of possible activities of the member states. Subsidiarity does not restrict the general provisions and aims of the Treaty. The general rules concerning the relationship between

²⁵ Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information, O.J. L 171, 29.6.2007, p. 1.

²⁶ T-339/16, T-352/16, T-391/16, para 89.

²⁷ Treaty on the Functioning of the European Union, O.J. C 326, 26.10.2012, p. 47.

domestic law and Union law as developed by the Court of Justice of the EU (CJEU) are not prejudiced. The principle of subsidiarity can be applied only in the areas of the so-called shared or concurring competences, in line with Articles 4-5 TFEU or in the fields of Union powers for supporting, coordinating or supplementing measures under Article 6 TFEU.²⁸ Within the area of shared powers if there is no full harmonisation member states preserve their legislative powers, in the light of Article 114 TFEU they are called concurring competences. That means that EU legislation based on Article 114 TFEU in this area has to fulfil subsidiarity test.²⁹

Harmonisation or approximation of legal provisions of the member states means setting up the standards defined by the EU. Subject to harmonisation according to Article 114 TFEU are laws, regulations and administrative provisions of the member states concerning the establishment and functioning of the internal market. In line with Article 26 (2) TFEU internal market 'comprises an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty. The essential objective is the creation of equal competitive conditions. The reference to internal market opens an extremely broad scope of application for Article 114 TFEU, however it must, in particular not undermine the principles of subsidiarity and conferred powers.³⁰ It was held in the judgment *Germany v Parliament and Council*,³¹ that that provision did not vest in the European Union legislature a general power to regulate the internal market. The power derived from Article 114 TFEU is restricted to situations in which it is in fact necessary to remedy obstacles to the free movement of goods, services and capital concerned between member states.³²

The above mentioned Framework Directive for the Approval of Motor Vehicles, like all the past and present European legislation on motor vehicles type approval, has as its legal basis Article 114 TFEU (or the equivalent articles of the Treaties which preceded the TFEU). Such a legal basis does not allow interference in transport or environmental policy, and this directive is essentially intended to facilitate the placement on the market, in each member state, of imported vehicles to prevent a fragmentation of the internal market. The usual type approval process for a new vehicle looks like as follows: the manufacturer submits a prototype to the competent authorities, which must ensure that that prototype satisfies the conditions laid down in Annex IV to dir. 2007/46/EC, in particular those which follow from reg. 715/2007/EC in relation to pollutant emissions. Once the 'type' is approved, the manufacturer begins its industrial production and every vehicle sold must comply with the type.³³ Therefore, the scope of that legislation goes no further. In particular, it is by no means intended to limit the policing powers of the member states' author-

²⁸ GEIGER, R., KHAN, D-E., KOTZUR, M. (eds). *European Union Treaties. Treaty on European Union. Treaty on the Functioning of the European Union*. München: C. H. BECK, 2015, pp. 35–37.

²⁹ WRÓBEL, A., (ed.). *Traktat o funkcjonowaniu Unii Europejskiej. T. II*. Warszawa: LEX a Wolters Kluwer business, 2012, pp. 561–565.

³⁰ GEIGER, R., KHAN, D-E., KOTZUR, M. (eds). *European Union Treaties. Treaty on European Union. Treaty on the Functioning of the European Union*. München: C. H. BECK, 2015, p. 559.

³¹ C 376/98, ECLI:EU:C:2000:544, para 83.

³² *Ibid.*, para 84–85.

³³ T-339/16, T-352/16 and T-391/16, para 92.

ities in relation to the circulation of vehicles once those vehicles are being used by their drivers.³⁴

3.2. Problem solution – member states’ regulatory autonomy to limit vehicle traffic

Air Quality Directive affords the member states complete freedom to adopt air pollution abatement measures. In particular, the short-term action plans for which that directive provides may contain measures relating to the circulation of motor vehicles.³⁵ That means that Framework Directive for the Approval of Motor Vehicles and its secondary ‘regulatory acts’ should in no way restrict the actions of the authorities of the member states in such matters.³⁶ The introduction of traffic legislation falls within the powers derived from national law. Besides, as already has been stated, the local public authorities may also enact such legislation to comply with their obligations under Air Quality Directive, even if that domestic legislation uses the Euro standards to determine the scope of the restrictions which it lays down.³⁷

Fulfilling their shared powers in the field of the EU environmental protection the applicant cities – Paris, Bruxelles and Madrid had already adopted measures to improve air quality in their municipalities. Paris introduced, by two successive decrees of the Mayor and the Police Commissioner, a restricted traffic area corresponding to the entirety of its ‘intra-muros’ territory. The circulation of vehicles not complying with at least a given Euro standard, for example at present the Euro 3 standard for a diesel passenger vehicle was prohibited on 1 September 2015 and then on 1 July 2017, from 8.00 to 20.00 on weekdays, save in specific circumstances. In 2020, the minimum standard to be met in order to be able to drive a vehicle in Paris will be the Euro 5 standard. The ‘Climate-Air-Energy Plan’³⁸ of that city provides for the prohibition of the circulation of diesel vehicles in 2024 and of petrol vehicles in 2030. Brussels created an extensive pedestrian zone in its centre and introduced ‘car-free days’. In 2015 and 2016 Madrid imposed by decrees of the Delegate of the Sector of Government responsible for the Environment and Mobility traffic restrictions during periods of high pollution, as provided for in the 2011-2015 Air Quality Plan³⁹ and the measurement protocol adopted by the city, which is to be initiated during periods of high NO_x pollution. It is worth mentioning, that the local authorities fulfil their Treaty based obligations under significant pressure, since the Commission already took actions against these cities in line with Article 258 TFEU for failing to comply with Air Quality Directive, (including in relation to the level of NO_x).⁴⁰

³⁴ *Ibid.*, para 44.

³⁵ BUKOWSKI, Z. Prawne uwarunkowania ochrony przed smogiem pochodzącym z emisji ze źródeł liniowych na przykładzie transportu drogowego. *Europejski Przegląd Sądowy*. 2017, Vol. 7, p. 52.

³⁶ T-339/16, T-352/16 and T-391/16, para 49.

³⁷ *Ibid.*, para 55.

³⁸ Plan Climat Air Energie territoriale, PCAET, 2018.

³⁹ Plan de Calidad del Aire de la Ciudad de Madrid 2011-2015 de 2012.

⁴⁰ Commission takes action..., see: footnote 18.

However, the sphere of autonomy enjoyed by national authorities, is indeed in the light of Article 4(3) of Directive for the Approval of Motor Vehicles significantly circumscribed. Since this Article 4(3) prevents the local public authorities from restricting (on grounds based on the level of pollutant emissions) the circulation of vehicles which satisfy the relevant European requirements in force.⁴¹ This argument may be challenged, since it has already been demonstrated above that harmonising legislation concerns only type approval for new types of vehicles and the entry into service of new cars, and not the circulation of vehicles already in service – ‘on the road’.

The application of subsidiarity principle, as modelled above with the consideration that there has been no full harmonization in the air quality law, leads to a partial conclusion that European Commission and municipalities may and should act independently. However, complete harmonisation resulting from the Framework Directive for the Approval of Motor Vehicles entails that the local public authorities cannot oppose the ordinarily intended use of a car which satisfies the requirements laid down in the harmonising arrangements, since they would otherwise undermine the practical effect of those arrangements.⁴²

The Treaty, as ever is the limit of powers, including member states’ autonomy. The next partial conclusion, that opens the second question considering possible violation of EU law, is that as long as the local authorities actions are not discriminatory they are in line with free movement of goods and conform with EU law.

3.3 Possible violation of EU law

Domestic legislation governing traffic restrictions which covers all vehicles, or a category of vehicles defined in relation to objective criteria, for example, vehicles over 3.5 tonnes generally, would not generate conflict with Framework Directive for the Approval of Motor Vehicles, because the scope of such legislation would not overlap with the scope of this directive. Therefore, most domestic legislation pertaining to the ‘Highway Code’ or adopted under that code and measures restricting circulation which cover all vehicles, such as those which establish pedestrian zones, ‘car-free days’ or alternating traffic arrangements in the event of a peak in pollution, cannot be affected by such acts of the European Union. Only domestic legislation taking into account aspects related to the construction or functioning of the vehicles covered by provisions of that directive (or its ‘regulatory acts’) can therefore fall foul of that provision.

Likewise, a local public authority could currently, without infringing the Framework Directive for the Approval of Motor Vehicles impose restrictions on circulation based on the level of pollutant emissions in respect of vehicles complying only with the Euro 5 standard, since that standard and the previous Euro standards are no longer in force for the purposes of the application of that directive. The Euro 6 standard has applied since 1

⁴¹ Member states are not to ‘prohibit, restrict or impede the (...) circulation on the road of vehicles (...) on grounds related to aspects of their construction and functioning covered by this Directive, if they satisfy the requirements of the latter’, T-339/16, T-352/16 and T-391/16, para 58.

⁴² *Ibid.*, para 69.

September 2014 for the homologation of new passenger vehicles and since 1 September 2015 for the registration or the authorisation to sell or put into service those vehicles. The Court of Justice of the EU in 2011, in *Commission v Austria*,⁴³ stated that, a member state protecting air quality, might perfectly prohibit the circulation of lorries falling into an earlier Euro class, than the current one. Whereas, imposing a sectoral traffic prohibition applicable to lorries regardless of Euro class into which they fell, would be contrary to the rules of the Treaty on the free movement of goods.⁴⁴

EU law related to the automotive industry focuses on strengthening the competitiveness of the European automotive industry by implementing an internal market regulatory framework of technical requirements, with a perspective to enhance trade and free movement of cars. For this reason, the interpretation and application of the Framework Directive for the Approval of Motor Vehicles has to guarantee that a new owner of a new motor vehicle (compliant with the homologation requirements) is entitled not only to purchase, register, put it into service and to get behind the wheel, but also to be certain of his future entrance to low emission zones in Paris, Madrid or Brussels. The practical effect of that directive would be undermined if the placement on the market of the cars potentially concerned would be impeded by the fear that it may not be possible to use them normally. For example, if a driver using a car to travel to Paris, Brussels or Madrid were to anticipate that these cities were going to prohibit there - the circulation of cars (not compliant with the limits of the Euro 6 standard during RDE tests), even if those cars do comply with the NTE values, such a driver might opt not to buy such a new petrol or diesel motor vehicle.⁴⁵

To conclude, traffic restrictions, relating to the level of vehicle pollutants, adopted by the member states' public authorities run counter to the requirements of EU law, in so far as they apply to vehicles compliant with the most recent homologation standards and limits. However, the cities of Paris, Brussels and Madrid, in the commented case, successfully proved that they are entitled to challenge the NOx emission limits determined by the Commission for RDE tests as too lenient. Since they could not include vehicle types which have successfully undergone those excessively liberal tests, within their parameters of domestic traffic-restriction measures i.e. low emission zones. They argued that the challenged regulation was adopted to constitute a 'licence to pollute' or a decline in the level of environmental protection. Commission, on the contrary, claimed that it bolstered the legal arsenal to combat air pollution by preventing the homologation of vehicles equipped with prohibited defeat devices.⁴⁶

4. CONCLUSION

This research shows a variety of legal instruments of municipal supervision over automobile emission standards. The final conclusion is composed of a few partial findings -

⁴³ C 28/09, ECLI:EU:C:2011:854.

⁴⁴ T-339/16, T-352/16 and T-391/16, paras 52-53.

⁴⁵ *Ibid.*, para 67.

⁴⁶ T-339/16, T-352/16 and T-391/16, para 104.

not perfectly complimentary, since this interdisciplinary issue is full of conflicting interests of environment and business sector. Having considered purely legal aspects, one can clearly notice the two overlapping areas of EU law – approval and market surveillance and air quality management that have to be applied in conformity to guarantee *effet utile* of the EU law system. There would be a great problem if, in the name of combating air pollution, a number of local authorities were to introduce low emission zones based on assessment criteria incompatible with the EU homologation standards.

Disputes over authority within the areas of shared powers have to be examined *ad casum* by means of subsidiarity principle and having considered the harmonisation level with the clarity as to the limits of the Treaty. Regarding the EU judicial environmental protection standards, this case is a very promising development. It shows that an act of the European Commission is of direct concern to municipal authority if it affects its own legislative powers, for instance in relation to regulating the circulation of vehicles and not just its power to adopt individual decisions within a pre-defined framework.⁴⁷ Taking into account all the difficulties faced by EU citizens and non-governmental environmental organisations (NGOs) in satisfying the standing requirements for an action for annulment (Article 263 TFEU), it is a great achievement. This decision may allow cities to become champions for environmental protection where the Commission fails to impose stringent EU measures.⁴⁸

⁴⁷ *Ibid.*, para 50.

⁴⁸ MOULES, R. Significant EU Environmental Cases: 2018. *Journal of Environmental Law*. 2019, Vol. 31, No.1, p. 164.