



Lawsuit against excessive pricing

European judgment first step in the right direction

Brussels, 27 October 2022 - Today, the European Court of Justice (ECJ) backed ADPA on numerous points regarding the interpretation of the Type Approval Regulation. This major decision is expected to have a large and positive impact on the wider independent automotive aftermarket, enabling it to ultimately propose more innovative, more affordable and, all in all, more competitive solutions to consumers.

The ECJ acknowledges that independent data publishers play a critical role in the aftermarket supply chain, through ensuring the provision of standardised databases of repair and maintenance information (in an increasing volume and complexity) to multi-brand repairers.

In order to ensure to their customers that the information they are aggregating and processing is fully reliable, ADPA Members are committed to source it primarily from the vehicle manufacturers themselves, which are establishing such databases for their own franchised networks. However, over the last years, some vehicle manufacturers have drastically increased the fees they charge to independent data publishers for accessing these portals. **Way above inflation, these increases are putting at risk, on the short term, the ability of independent data publishers to continue to provide their services at an affordable cost to their customers.**

Considering that the Type Approval Regulation (Regulation (EU) 2018/858), and in particular Articles 61 and 63, were protecting data publishers against such practices, ADPA alerted the vehicle manufacturers several times in 2018 and 2019. However, **such practices continued and spread**, in particular on behalf of PSA, to such extent that the situation led to ADPA no other choice but to initiate litigation against PSA in front of the regional Court of Cologne (Germany) in September 2019, with the support of German trade association GVA. Very quickly, the **Court of Cologne addressed four questions to the ECJ**, which it has now answered.

ADPA welcomes the ECJ decision regarding the first question on the scope of application of the Type Approval Regulation 2018/858. It clarifies once and for all that the related provisions on access to repair and maintenance information also apply to vehicles which were type-approved for the first time before the 1st of September 2020. In line with similar clarifications of the European Commission, this decision brings much needed legal certainty and allows the vast majority of vehicles in the EU to be served by the independent aftermarket, irrespective of the date of type-approval. This is good news for European consumers as these services will continue to be subject to competition.

With regard to the second question, **the ECJ shares ADPA's view that independent operators, including data publishers don't need a separate license for the actual use of the repair and maintenance information obtained from vehicle manufacturers'** databases in their own products. It follows from the judgment that the right to access is a statutory claim and does not depend on a contractual agreement with the manufacturer. This decision confirms ADPA's and the European Commission's position that fees include the right to use the information, as initially intended by the lawmaker. As such, all fees to be paid by the data publishers are subject to Article 63, meaning that monetization without limit by the vehicle manufacturers is not possible. Peugeot and PSA were not successful with their argument that data publishers should pay an extra license fee. Instead, fees have to be based on a general tariff system, and should only take into account either time or duration of the access, or the volume or the number of transactions.



On the third and fourth question, **ADPA shares the ECJ's view that the tariff systems to be applied may vary between the different categories of independent operators**, as according to their business models their needs for information are different. The ECJ unfortunately does not provide further guidance on the interpretation of "reasonable and proportionate", underlining however once more that the fees should not discourage access and emphasizing the importance of a reasonable fee level for competition on the automotive aftermarket. As such, it leaves it up to the national courts in the EU to make an assessment, and ADPA fears it might result in major market uncertainty, divergent caselaw, and increased litigation. **ADPA would have welcomed if the ECJ had taken the opportunity to provide further guidance** to all market participants including the vehicle manufacturers in order to reach a harmonised enforcement of the law across all EU Member States. **ADPA therefore calls upon the EU lawmaker to urgently address this important issue by providing much needed legal certainty.**

All in all, **ADPA welcomes the ruling of the ECJ** which was published today, which is in line with its own and the European Commission's legal interpretation of the Type Approval Regulation. This decision, by recognising their specific role in the automotive ecosystem, will enable data publishers to benefit from increased legal certainty and should help them to continue to offer independent, multi-brand and affordable solutions to workshops all over the European Union. **The EU lawmaker might consider some additional clarifications, but this is already a crucial step in the right direction for fair competition in the provision of automotive aftermarket services.**

Ralf Pelkmann, ADPA President, said: **"This is a positive day for the independent automotive aftermarket and, ultimately, for consumers.** It will allow the latter to continue benefitting from affordable services from their local multi-brand workshops, as those will continue to be able to access reliable and affordable technical information. We are proud that ADPA, with this initiative, contributed to the well-functioning of our entire ecosystem."

Thomas Vollmar, GVA President, underlined: **"The ECJ gave today much welcomed clarifications**, in particular on the scope of the Type Approval Regulation. This useful ruling clarifies once and for all that the improved aftermarket-related provisions also apply to previously type-approved vehicles, giving a chance to multi-brand repairers and their independent value chain to continue to offer alternative and competitive services to consumers."

Pierre Thibaudat, ADPA Director General, added: **"It is a major step against current tendencies towards the monopolisation by vehicle manufacturers of aftermarket services** and against attempts to keep consumers captive once they acquired a vehicle. It is a great example of the European Union successfully protecting both consumers and competition."

For more information

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ADPA, the European Automotive Data Publishers Association, aims to ensure fair access to automotive data and information and to provide competitive framework conditions for independent data publishers. This enables the publishers to design and provide competitive, innovative and multibrand solutions to operators of the automotive aftermarket. Founded in 2016 and based in Brussels, ADPA is a Member of AFCAR, the Alliance for the Freedom of Car Repair in the European Union.