

Ms. Adina-Ioana Vălean
Commissioner for Transport
European Commission
Rue de la Loi, 200
1049 Brussels
Belgium

July 19, 2022

Subject: Call to action to the European Commission against restrictions to the freedom of establishment in the Spanish PHV market

Dear Commissioner Vălean,

Representing the Spanish PHV industry, we write to you again with the most serious concerns over the risk of disappearance our industry is facing in Spain. Both national and regional authorities are adopting measures that, combined, are an imminent threat to the continuity of the PHV service in most regions in Spain, especially in Catalonia. It is our understanding that Spanish authorities are blatantly ignoring the recommendations provided in the Commission's Notice 2022/C 62/01¹, and in breach of the freedom of establishment as defined in the Treaty.

We urge the European Commission to carefully analyze the arguments addressed in this letter, which justify the need to initiate a procedure against the Kingdom of Spain for infringement of the freedom of establishment in the PHV market.

A vibrant PHV industry has flourished in Spain as more than 17,000 licences were granted in recent years under national legislation, and despite the disproportionate restrictions which are damaging our rights to free enterprise, such as minimum waiting time, prohibition of geolocation, some forms of return-to-garage-style obligations, etc. introduced in regions such as Catalonia, Valencia, the Basque Country, Galicia, Aragon, the Balearic Islands, Murcia, and others.

However, as you may remember from our previous [letter](#) dated 14 June 2022, PHVs will no longer be allowed to offer urban services (starting and ending in a same municipality) starting 1 October 2022, as a result of the termination of the transitory period allowed by the national Royal Law-Decree 13/2018. We have battled Royal Law Decree 13/2018 in national courts with no results for the time being.

Since 2018, it is the responsibility of Spanish regional authorities to introduce a new regulatory framework that expressly regulates urban PHV services². In those regions where no legislation is adopted, PHV services will have to be terminated for the sake of urban services, as no valid title will support the activity. For years, no action has been taken.

The only region that has adopted a new regulation ensuring the continuity of the existing PHV licences has been Madrid. Adopted on 5 June 2022, Law 5/2022³ has grandfathered licences for urban services to all Madrid-based entities with a national PHV licence. With a simple piece of legislation, the continuity of the service in Madrid has been guaranteed.

¹ Notice from the Commission on well-functioning and sustainable on-demand local passenger transport (taxis and PHVs) 2022/C 62/01. Official Journal of the European Union, of February 4, 2022. [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0204\(03\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XC0204(03)&from=EN)

² Royal Law-Decree 13/2018, of September 28, amending Law 16/1987, of July 30, on the Regulation of Land Transportation, regarding the leasing of vehicles with drivers. https://www.boe.es/diario_boe/txt.php?id=BOE-A-2018-13179

³ Law 5/2022, of June 5, amending Law 20/1998, of November 27, 1998, on the organisation and coordination of urban transportation in the Community of Madrid

The second region to adopt a new regulation has been Catalonia, by means of Law Decree 9/2022⁴, on 5 July 2022. Contrary to the legislation in Madrid –and also to the measures the European Commission recommends for the regulation of well-functioning PHV services–, Catalan authorities have adopted the most restrictive regulation, resulting in the expulsion from the market of the majority of current licensees, and introducing the most serious restrictions for the provision of PHV services. This new Catalan Law Decree **leads to an unlevel playing field and disproportionate operating conditions for our sector**. More concretely:

- Despite having had four years to regulate via an ordinary process, the Catalan government has opted to regulate via a Law Decree, a tool used in cases of extraordinary and urgent necessity, which excludes the participation of sector representatives and social partners. In fact, the Catalan government is used to regulating PHVs based on these grounds, as this is the third Law Decree issued in the last six years⁵.
- Most current licensees will be excluded from the market, as the conditions to grant the new licenses for urban services are extremely restrictive: only licenses with proven activity over the last year will be transformed, even if due to the COVID-19 pandemic, supply has been adapted to the low demand, and some licenses have not been active. For those licensees that have been active, another condition has been defined: to have a clean record of administrative fines. A single fine imposed on a single vehicle of a large fleet, excludes the granting of new licenses to the whole fleet. Let's not forget that most of the fines imposed in Catalonia are due to the breach of disproportionate restrictions such as the 15-minute minimum waiting time. As a result, only a negligible fraction of the existing licenses will be able to continue operating.
- The requirement to hold a second PHV license to provide urban services was already contemplated by local authorities (Metropolitan Area of Barcelona) in 2019 and is pending a preliminary ruling from the CJEU, following a referral⁶ from the Catalan High Court on the grounds of an alleged restriction to the freedom of establishment (article 49 TFEU).
- The Catalan Law Decree 9/2022 maintains in place existing disproportionate restrictions to the operation of PHV services such as the 15-minute mandatory waiting time before the start of the service, a ban on geolocation to show vehicles to passengers in apps, and an obligation to travel back without a passenger to private garages. These are all disproportionate restrictions in breach of the freedom of establishment, as identified in the Commission's Notice 2022/C 62/01.
- Furthermore, new restrictions have been introduced: a minimum length for PHV vehicles (4.9m), which leaves out 90% of the current fleets, is counterproductive as it leads to bigger, broader and heavier cars, and will have a negative impact on congestion, energy consumption and the environment.

The Catalan Competition Authority (ACCO) issued its Regulatory Report IR 61/2022 on 18 July 2022⁷, in which it concludes that the Catalan Law Decree 9/2022 is contrary to Competition Law, persists in regulatory inefficiency, and establishes requirements that are absolutely contrary to the principles of good regulation of the markets. Moreover, in the own words of ACCO, *"in terms of legality, it is considered that*

⁴ Law Decree 9/2022, of July 5, on urgent measures regarding the rental of vehicles with drivers. https://portaljuridic.gencat.cat/ca/detalls/noticia/mesures_urgents_lloguer_vehicles_conductor

⁵ Previous Law Decrees on urgent measures for PHVs include 2017 [Law-Decree 5/2017, August 1st](#) and 2019 [Law-Decree 4/2019, 29th January](#).

⁶ Case C-50/21: Request for a preliminary ruling from the Tribunal Superior de Justicia de Cataluña (Spain) lodged on 29 January 2021 — Prestige and Limousine, S.L. v Àrea Metropolitana de Barcelona. <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=241102&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=718753>

⁷ Regulatory Report IR 61/2022, of July 18, of the Catalan Competition Authority on the Catalan Law Decree 9/2022 on urgent measures regarding PHVs: http://acco.gencat.cat/web/.content/80_acco/documents/arxius/actuacions/20220718_informe_regulacio_final_ca_t.pdf, and accompanying press release: http://acco.gencat.cat/ca/detall/article/20220715_ndp_decret_taxi_vtc

there are risks that the provisions of Law Decree 9/2022 may be contrary to the freedom of establishment enshrined in Article 49 of the Treaty on the Functioning of the European Union".

Adding to the above, the lack of support from authorities is also concerning. The latest [survey](#) (attached) carried out in Barcelona in early July 2022 shows that 72% of Catalans are in favour of the adoption of a new regulatory framework under which taxis and PHVs can provide services on equal conditions. In fact, most respondents (66%) believe that the regulation has been driven by the government's fear of the reaction from certain taxi associations.

In the light of this background, we urgently need actions to ensure the survival of the PHV industry in Spain. As Spanish authorities have consistently ignored the Commission's Notice on well-functioning and sustainable on-demand local passenger transport, they have not only not eliminated any of the existing disproportionate restrictions, but even introduced new and more serious ones, and as a consequence, in most regions the existing providers will be expelled from the market. Therefore, we strongly believe it is time to initiate a procedure against the Kingdom of Spain for infringement of the freedom of establishment in the PHV market.

Thank you in advance for your interest. We look forward to your response.

Best regards,

Ignacio Manzano

Vice President, Feneval



 **FENEVAL**

José Manuel Berzal

President, Unauto



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