



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

27 October 2022*

(Reference for a preliminary ruling – Market for vehicle repair and maintenance information services – Regulation (EU) 2018/858 – Article 61 – Obligation on automotive manufacturers to provide vehicle repair and maintenance information – Scope – Right of access to that information – Independent operators – Publishers of technical information – Article 63 – Reasonable and proportionate fees for access)

In Case C-390/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Landgericht Köln (Regional Court, Cologne, Germany), made by decision of 10 June 2021, received at the Court on 25 June 2021, in the proceedings

ADPA European Independent Automotive Data Publishers,

Gesamtverband Autoteile-Handel eV

v

Automobiles PEUGEOT SA,

PSA Automobiles SA,

THE COURT (Eighth Chamber),

composed of N. Piçarra (Rapporteur), acting as President of the Chamber, N. Jääskinen and M. Gavalec, Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– ADPA European Independent Automotive Data Publishers and Gesamtverband Autoteile-Handel eV, by E. Macher, M. Sacré and P. Schmitz, Rechtsanwälte,

* Language of the case: German.

- Automobiles PEUGEOT SA and PSA Automobiles SA, by F. Hübener, B. Lutz and A. Wendel, Rechtsanwälte,
- the European Commission, by M. Huttunen and M. Noll-Ehlers, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 61(1) and Article 63(1) of Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC (OJ 2018 L 151, p. 1), and of Article 6(1) and Article 7(1) of 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 (OJ 2007 L 171, p. 1).
- 2 The request has been made in proceedings between, on the one hand, ADPA European Independent Automotive Data Publishers, an international not-for-profit association governed by Belgian law, and Gesamtverband Autoteile-Handel eV, an association governed by German law, and, on the other hand, Automobiles PEUGEOT SA ('Peugeot') and PSA Automobiles SA ('PSA') regarding the fee charged by Peugeot and PSA for access to vehicle repair and maintenance information for the vehicles which they manufacture.

Legal context

European Union law

- 3 Recitals 50 and 52 of Regulation 2018/858 state:
 - '(50) Unrestricted access to vehicle repair and maintenance information, via a standardised format that can be used to retrieve the technical information, and effective competition in the market for services providing such information, are necessary to improve the functioning of the internal market, in particular as regards the free movement of goods, the freedom of establishment and the freedom to provide services. The requirements for the provision of repair and maintenance information have so far been laid down in Regulations (EC) No 715/2007 ... and (EC) No 595/2009 ... of the European Parliament and of the Council [of 18 June 2009 on type-approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC (OJ 2009 L 188, p. 1)]. Those requirements should be consolidated in this Regulation and Regulations (EC) No 715/2007 and (EC) No 595/2009 should be amended accordingly.

...

(52) In order to ensure effective competition in the market for vehicle repair and maintenance information services, and in order to clarify that the information concerned also covers information which needs to be provided to independent operators other than repairers, so as to ensure that the independent vehicle repair and maintenance market as a whole can compete with authorised dealers, regardless of whether the vehicle manufacturer gives such information to authorised dealers and repairers or uses such information for the repair and maintenance purposes itself, it is necessary to set out the details of the information to be provided for the purposes of access to vehicle repair and maintenance information.’

4 Article 3 of that regulation sets out the following definitions:

‘(1) “type-approval” means the procedure whereby an approval authority certifies that a type of vehicle, system, component or separate technical unit satisfies the relevant administrative provisions and technical requirements;

...

(45) “independent operator” means a natural or legal person, other than an authorised dealer or repairer, who is directly or indirectly involved in the repair and maintenance of vehicles, and include repairers, manufacturers or distributors of repair equipment, tools or spare parts, as well as publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services, operators offering training for installers, manufacturers and repairers of equipment for alternative-fuel vehicles; it also means authorised repairers, dealers and distributors within the distribution system of a given vehicle manufacturer to the extent that they provide repair and maintenance services for vehicles in respect of which they are not members of the vehicle manufacturer’s distribution system;

...

(47) “independent repairer” means a natural or legal person who provides repair and maintenance services for vehicles and who does not operate within the manufacturer’s distribution system;

(48) “vehicle repair and maintenance information” means all information, including all subsequent amendments and supplements thereto, that is required for diagnosing, servicing and inspecting a vehicle, preparing it for road worthiness testing, repairing, re-programming or re-initialising of a vehicle, or that is required for the remote diagnostic support of a vehicle or for the fitting on a vehicle of parts and equipment, and that is provided by the manufacturer to his authorised partners, dealers and repairers or is used by the manufacturer for the repair and maintenance purposes;

...’

5 Article 61 of that regulation, entitled ‘Manufacturers’ obligations to provide vehicle OBD [(*On board diagnostics*)] information and vehicle repair and maintenance information’, provides that:

‘1. Manufacturers shall provide to independent operators unrestricted, standardised and non-discriminatory access to vehicle OBD information, diagnostic and other equipment, tools including the complete references, and available downloads, of the applicable software and vehicle repair and maintenance information. Information shall be presented in an easily accessible manner in the form of machine-readable and electronically processable datasets. Independent operators shall have access to the remote diagnosis services used by manufacturers and authorised dealers and repairers.

Manufacturers shall provide a standardised, secure and remote facility to enable independent repairers to complete operations that involve access to the vehicle security system.

2. ...

The vehicle OBD information and the vehicle repair and maintenance information shall be made available on the websites of manufacturers using a standardised format or, if this is not feasible, due to the nature of the information, in another appropriate format. For independent operators other than repairers, the information shall also be given in a machine-readable format that is capable of being electronically processed with commonly available information technology tools and software and which allows independent operators to carry out the task associated with their business in the aftermarket supply chain.

...

9. Where repair and maintenance records of a vehicle are kept in a central database of the vehicle manufacturer or on its behalf, independent repairers shall have access to such records free of charge and shall be able to enter information on repair and maintenance which they have performed.

...’

6 Article 63 of that regulation, entitled ‘Fees for access to vehicle repair and maintenance information’, is worded as follows:

‘1. The manufacturer may charge reasonable and proportionate fees for access to vehicle repair and maintenance information other than the records referred to in Article 61(10). Those fees shall not discourage access to such information by failing to take into account the extent to which the independent operator uses it. ...

2. The manufacturer shall make available vehicle repair and maintenance information, including transactional services such as reprogramming or technical assistance, on an hourly, daily, monthly, and yearly basis, with fees for access to such information varying in accordance with the respective periods of time for which access is granted.

In addition to time-based access, manufacturers may offer transaction-based access for which fees are charged per transaction and not based on the duration for which access is granted.

Where the manufacturer offers both systems of access, independent repairers shall choose systems of access, which may be either time-based or transaction-based.’

7 Under Article 86 of Regulation 2018/858, entitled ‘Amendments to Regulation (EC) No 715/2007’:

‘1. Regulation (EC) No 715/2007 is amended as follows:

...

(4) Chapter III is deleted;

...

2. References to the deleted provisions of Regulation (EC) No 715/2007 shall be construed as references to this Regulation and shall be read in accordance with the correlation table set out in point 1 of Annex XI to this Regulation.’

8 Article 89(1) of that regulation, laying down transitional provisions, provides that ‘this Regulation shall not invalidate any whole-vehicle type-approval or EU type-approval granted to vehicles or to systems, components or separate technical units by 31 August 2020’.

9 Annex X to that regulation, entitled ‘Access to vehicle OBD information and vehicle repair and maintenance information’, provides, in point 6.1, that ‘those requiring the right to duplicate or republish the information shall negotiate directly with the manufacturer concerned’.

German law

10 Paragraph 3a of the Gesetz gegen den unlauteren Wettbewerb (Law against Unfair Competition) of 3 July 2004 (BGBl. 2004 I, p. 1414) as amended by the Law of 17 February 2016 (BGBl. 2016 I, p. 233), provides that ‘a person who infringes a statutory provision that is also intended to regulate market conduct in the interests of market participants shall be regarded as acting unfairly where the infringement is liable to have a significant adverse effect on the interests of consumers, other market participants or competitors’.

11 Paragraph 8(3)(2) of that law allows an action for the removal of an unfair commercial practice to be brought against ‘associations with the legal capacity to promote commercial or independent professional interests, in so far as they are affiliated with a significant number of traders who distribute identical or related products or services on the same market, where those associations are in a position, in particular through their human, material and financial resources, effectively to perform tasks to pursue commercial or independent professional interests as, in fact, set out in their statutes and in so far as the infringement affects the interests of their members’.

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 Peugeot and PSA hold the type-approvals, within the meaning of Article 3(1) of Regulation 2018/858, for Peugeot vehicles. On that basis, they grant access to information, referred to in Annex X to that regulation, relating to the repair and maintenance of approved vehicles, by means of a database available on an internet portal which ‘independent operators’, within the

meaning of Article 3(45) of that regulation, may consult in return for payment of a sum applicable to all of those operators, which varies in amount on the basis of the duration of the access granted, with no other individual variables being taken into consideration.

- 13 As regards, in particular, the publishers of technical information, they must conclude an annual agreement with Peugeot and PSA which grants them the right of access to those data, in order to extract vehicle repair and maintenance information from them and to use them to develop and sell information products directed at users such as motor vehicle repair shops, wholesalers and manufacturers of replacement parts. The amount of the fees charged is fixed individually for each publisher for a specific period, as from the base price. That price corresponds to the fixed fees charged to other independent operators, multiplied by the number of end consumers of the publisher and by the average market share in the vehicle market over the previous 10 years. The whole price is divided by a discount coefficient which depends on the number of end users and the added value as a result of the processing of data.
- 14 According to ADPA European Independent Automotive Data Publishers and Gesamtverband Autoteile-Handel, the fees thus calculated are neither ‘reasonable’ nor ‘proportionate’ within the meaning of Article 63(1) of Regulation 2018/858. The taking into account of the number of end users constitutes, in their view, unlawful remuneration for the use of the information, in that it amounts to granting automotive manufacturers a share in the profits made. They submit that such a method of calculation, in so far as it fails to comply with Regulation 2018/858, constitutes an unfair commercial practice prohibited by German law. Consequently, they brought an action against Peugeot and PSA seeking an order requiring them to charge the publishers of technical information the same fees as those charged to independent repairers, within the meaning of Article 3(47) of that regulation, for access to vehicle repair and maintenance information.
- 15 Peugeot and PSA submit, first, that the applicable regulation is Regulation No 715/2007, since the vehicles in question were approved before 1 September 2020, the date on which Regulation 2018/858 entered into force. They submit, next, that the method of calculating fees must not be assessed in the light of Article 63 of Regulation 2018/858, since the fees at issue are not intended to remunerate mere access to the information on ‘vehicle repair and maintenance’, within the meaning of Article 61(1) of that regulation, but constitute consideration for a licence for the commercial exploitation of that information. Finally, even if those fees are covered by Article 63 of Regulation 2018/858, Peugeot and PSA claim that that provision leaves automotive manufacturers a margin of discretion with regard to the method by which the fees charged are calculated.
- 16 The referring court is uncertain, in the first place, as to the provisions applicable *ratione temporis* in respect of access to information on vehicles approved before Regulation 2018/858 entered into force.
- 17 It asks, in the second place, whether it is permissible for the vehicle manufacturers in question, under the concept of ‘access to information’ referred to in Article 61 of that regulation, interpreted in the light of recitals 50 and 52 and Article 63 of, and point 6.1 of Annex X to, that regulation, to require publishers of technical information to hold a specific operating licence for access to vehicle repair and maintenance information.
- 18 In the third place, that court expresses uncertainty as to whether the principle of equal treatment requires that the same methods for calculating fees charged under Article 63 of Regulation 2018/858 be applied to independent repairers and publishers of technical information. According

to that court, the fact that the duration of access to the information is the only criterion for differentiating between the beneficiaries of the right of access to that information for the purpose of fixing those fees, as set out in Article 63(2) of that regulation, militates in favour of a uniform tariff system. Conversely, it points out that the concept of ‘reasonable and proportionate fees’, used in Article 63(1) of that regulation, supports a case-by-case calculation of the fees charged to beneficiaries of the right of access to vehicle maintenance and repair information.

- 19 If the answer to the third question is in the negative, the referring court expresses uncertainty as to whether the concept of ‘reasonable and proportionate fees’ must be interpreted as meaning that, for the calculation of those fees, account must be taken solely of the actual costs incurred by the manufacturer, in order to give access to information relating to the repair and maintenance of its vehicles, irrespective of the economic value of that information.
- 20 In those circumstances, the Landgericht Köln (Regional Court, Cologne, Germany) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Do the provisions of Chapter XIV of Regulation 2018/858 (Article 61 et seq., including Annex X) also apply to those vehicle models which were type-approved for the first time before 1 September 2020, under Regulation No 715/2007?

If this question is answered in the negative, additionally:

Does Chapter III of Regulation No 715/2007 and, in relation to the calculation of fees, specifically Article 7 of [that regulation], still apply in relation to these “used vehicles”?

(2) Does the concept of “access” to that information, which the manufacturer is required to grant under Article 61(1) of Regulation 2018/858, include giving the publishers of technical information pursuant to Article 3(45) of [that regulation] the authority to use this information for tasks associated with their business in the aftermarket supply chain, or does a right of exploitation of this kind require a separate agreement in the form of an exploitation and republishing licence, which then does not fall within the scope of Article 63 of Regulation 2018/858 as regards the fees claimed by the manufacturer in this respect?

If the first question referred is answered in the negative, and Chapter III of Regulation No 715/2007 applies to used vehicles, additionally:

Does the concept of “access” to that information, which the manufacturer is required to grant under Article 6(1) of Regulation No 715/2007, include giving the publishers of technical information pursuant to Article 3(15) of [that regulation] the authority to use this information for tasks associated with their business in the aftermarket supply chain, or does a right of exploitation of this kind require a separate agreement in the form of an exploitation and republishing licence, which then does not fall within the scope of Article 7 of Regulation No 715/2007 as regards the fees claimed by the manufacturer in this respect?

(3) Is the concept of “reasonable and proportionate fees” in the first sentence of Article 63(1) of Regulation 2018/858 to be interpreted as meaning that the manufacturer must treat all independent economic operators pursuant to Article 3(45) of [that regulation] equally when calculating fees, irrespective of their commercial activity?

If the first question referred is answered in the negative, and Chapter III of Regulation No 715/2007 applies to used vehicles, additionally:

Is the concept of “reasonable and proportionate fees” in the first sentence of Article 7(1) of Regulation No 715/2007 to be interpreted as meaning that the manufacturer must treat all independent economic operators pursuant to Article 3(15) of Regulation No 715/2007 equally when calculating fees, irrespective of their commercial activity?

If the third question referred is answered in the negative:

- (4) Is the concept of “reasonable and proportionate fees” in the first sentence of Article 63(1) of Regulation 2018/858 to be interpreted as meaning that the fee should generally only cover the manufacturer’s costs?

If the first question referred is answered in the negative, and Chapter III of Regulation No 715/2007 applies to used vehicles, additionally:

Is the concept of “reasonable and proportionate fees” in the first sentence of Article 7(1) of Regulation No 715/2007 to be interpreted as meaning that the fee should generally only cover the manufacturer’s costs?’

The first question

- 21 By its first question, the referring court asks, in essence, whether Articles 61 and 63 of Regulation 2018/858 must be interpreted as meaning that they apply to vehicle models approved under Regulation No 715/2007.
- 22 It should be noted, in the first place, that Regulation 2018/858, as is apparent from recital 50 thereof, does not repeal Regulation No 715/2007, but consolidates the requirements laid down by that regulation relating to the provision of motor vehicle repair and maintenance information, within the meaning of Article 3(48) of Regulation 2018/858. In addition, Article 89(1) of Regulation 2018/858, in force since 1 September 2020, states that it does not invalidate any whole-vehicle type-approval or EU type-approval granted up to 31 August 2020 to vehicles or to systems, components or separate technical units.
- 23 In the second place, it should be noted that, although Article 86(1)(4) of Regulation 2018/858 deletes Chapter III of Regulation No 715/2007 on access to vehicle repair and maintenance information, Article 86(2), states, however, that references to the deleted provisions of Regulation No 715/2007 are to be construed as references to Regulation 2018/858 and are to be read in accordance with the correlation table set out in point 1 of Annex XI to that regulation. In accordance with that annex, Articles 61 and 63 of Regulation 2018/858 replace Articles 6 and 7 of Regulation No 715/2007 and have, since 1 September 2020, been applicable to vehicles approved before that date.
- 24 For all of the foregoing reasons, the answer to the first question is that Articles 61 and 63 of Regulation 2018/858, read in conjunction with Article 86(1)(4) and Article 86(2) of, and point 1 of Annex XI to, that regulation, must be interpreted as meaning that they apply to vehicle models approved under Regulation No 715/2007.

The second question

- 25 By its second question, the referring court asks, in essence, whether Article 61(1) of Regulation 2018/858 must be interpreted as meaning that the obligation which it imposes on automotive manufacturers to provide unlimited, standardised and non-discriminatory access to ‘vehicle repair and maintenance information’, defined in Article 3(48) of that regulation, includes the obligation to allow publishers of technical information to process and use that information for the purposes of their activities in the aftermarket supply chain, without subjecting them to conditions other than those laid down in that regulation.
- 26 In that regard, it must be stated at the outset that the concept of ‘independent operator’ is defined in Article 3(45) of Regulation 2018/858 as any natural or legal person, other than an authorised dealer or repairer, who is directly or indirectly involved in the repair and maintenance of vehicles. Publishers of technical information are expressly mentioned in that point 45 as coming within the category of independent operators.
- 27 Under the first subparagraph of Article 61(1) of Regulation 2018/858, publishers of technical information thus benefit, as independent operators, from unrestricted, standardised and non-discriminatory access to vehicle repair and maintenance information. That information must be presented in an easily accessible manner in the form of machine-readable and electronically processable datasets. Such access via a standardised format is intended to be used, as stated in recital 50 of that regulation, ‘to retrieve the technical information’.
- 28 The second sentence of the second subparagraph of Article 61(2) of that regulation states that, for independent operators other than repairers, including publishers of technical information, that information must be given in a format that is capable of being electronically processed so that those operators can carry out the tasks associated with their business in the aftermarket supply chain. It should be added that that obligation for automotive manufacturers was introduced only during the legislative procedure relating to Regulation 2018/858 (see, to that effect, judgment of 19 September 2019, *Gesamtverband Autoteile-Handel*, C-527/18, EU:C:2019:762, paragraph 34).
- 29 It thus follows from the very wording of those provisions that the obligation on automotive manufacturers to provide unrestricted, standardised and non-discriminatory access to vehicle repair and maintenance information, referred to in Article 61(1) of Regulation 2018/858, includes the obligation to allow publishers of technical information to process and use such information, without any conditions other than those laid down by that regulation, within the framework and for the purposes of their specific commercial activities in the aftermarket supply chain.
- 30 Such an interpretation is supported by the objective set out in recitals 50 and 52 of Regulation 2018/858, namely to allow effective competition in the market for services consisting of the provision of vehicle repair and maintenance information, so that the independent vehicle repair and maintenance market can compete with that of authorised dealers.
- 31 The publishers of technical information, in that they facilitate access to the information necessary for vehicle repair and maintenance by independent operators who are not authorised dealers or repairers who are part of the manufacturers’ distribution system, in particular through the processing, exploitation and compilation of that information, contribute to the development of the vehicle repair and maintenance market by such operators.

- 32 Accordingly, the right of access to that information, which Article 61(1) of Regulation 2018/858 requires automotive manufacturers to guarantee to, among others, publishers of technical information, must include the right of those publishers to process and exploit that information in the context and for the purposes of their own commercial activity, without any conditions other than those laid down by that regulation.
- 33 Point 6.1 of Annex X to Regulation 2018/858 – which imposes the obligation for those requiring the right to duplicate or republish vehicle maintenance and repair information to negotiate directly with the manufacturer concerned – cannot call into question that interpretation of the right of access to information, guaranteed in Article 61 of that regulation, to publishers of technical information, in their capacity as independent operators.
- 34 The processing and use of such information by those publishers, in the context and for the purposes of their own commercial activity, on the basis of Article 61 of Regulation 2018/858, cannot be equated with the mere taking of duplications or reproductions of that information, within the meaning of point 6.1 of Annex X to that regulation, which, as the European Commission observes, lays down in general terms the technical requirements relating to access to information on, inter alia, vehicle repair and maintenance.
- 35 For all of the foregoing reasons, the answer to the second question is that Article 61(1) of Regulation 2018/858 must be interpreted as meaning that the obligation which it imposes on automotive manufacturers to provide unrestricted, standardised and non-discriminatory access to motor vehicle repair and maintenance information, defined in Article 3(48) of that regulation, includes the obligation to allow publishers of technical information to process and use that information for the purposes of their activities in the aftermarket supply chain, without subjecting them to conditions other than those laid down in that regulation.

The third and fourth questions

- 36 By its third and fourth questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 63 of Regulation 2018/858 must be interpreted as meaning that the concept of ‘reasonable and proportionate fees’, set out in that article, requires automotive manufacturers to apply, to all independent operators, a uniform method of calculating those fees based solely on the costs borne as a result of the access to vehicle repair and maintenance information which that regulation requires them to grant.
- 37 The first sentence of Article 63(1) of Regulation 2018/858 allows automotive manufacturers to charge fees for access to vehicle repair and maintenance information, provided that those fees are reasonable and proportionate. It follows from the second sentence of Article 63(1) that those fees must not discourage access to such information and, for that purpose, must take into account the extent to which each independent operator uses it.
- 38 The first subparagraph of Article 63(2) of Regulation 2018/858 also provides that automotive manufacturers are to make that information available on an hourly, daily, monthly and yearly basis and determine the fees for access to such information varying in accordance with the respective periods of time for which access is granted. The second subparagraph of Article 63(2) allows those manufacturers to offer, in the alternative, transaction-based access for which fees

are charged on the basis of the number of transactions. The third subparagraph of Article 63(2) of Regulation 2018/858 allows independent repairers, defined in Article 3(47) of that regulation, to choose between those two systems of access where the manufacturer offers both systems.

- 39 Furthermore, the last sentence of the first subparagraph of Article 61(1) of Regulation 2018/858 guarantees those independent repairers access to the remote diagnosis services used by manufacturers and dealers to enable them to complete operations that involve access to the vehicle security system. Similarly, Article 61(9) of that regulation provides that, where vehicle repair and maintenance records are kept in a central database of the vehicle manufacturer, those independent repairers are to have access to such records free of charge and are to be able to enter information on repair and maintenance which they have performed.
- 40 It follows, in the first place, from those provisions that the obligations which Regulation 2018/858 imposes on automotive manufacturers vary depending on the status of the beneficiary of those obligations, which excludes from the outset the application of a single flat-rate amount to all independent operators, in respect of the fees charged for access to vehicle repair and maintenance information. To that end, automotive manufacturers must, inter alia, take into account the use that the different independent operators make of that information in the course of their commercial activities.
- 41 That textual interpretation is, moreover, consistent with the general principle of equal treatment which requires not only that comparable situations must not be treated differently, but also that different situations must not be treated in the same way unless such treatment is objectively justified (judgments of 19 October 1977, *Ruckdeschel and Others*, 117/76 and 16/77, EU:C:1977:160, paragraph 7; of 16 December 2008, *Arcelor Atlantique et Lorraine and Others*, C-127/07, EU:C:2008:728, paragraph 23; and of 17 December 2020, *Centraal Israëlitisch Consistorie van België and Others*, C-336/19, EU:C:2020:1031, paragraph 85 and the case-law cited).
- 42 However, as Peugeot and PSA have, in essence, pointed out, the publishers of technical information, on the one hand, and independent repairers, on the other, are not in comparable situations with regard to the subject matter of, and the objective pursued by, Regulation 2018/858. Accordingly, the general principle of equal treatment precludes that regulation from being interpreted as laying down a uniform method of calculation for access by all independent operators to vehicle repair and maintenance information.
- 43 In the second place, it is not apparent from the wording of any of the provisions referred to in paragraphs 37 and 38 above that automotive manufacturers are required, for the calculation of fees for access to vehicle repair and maintenance information, to rely solely on the costs entailed by the obligation to provide access to that information, imposed on them by Regulation 2018/858. The only condition laid down in Article 63(1) of that regulation, read in the light of recital 52 thereof, is that those fees must be reasonable and proportionate, so that their amount does not deter independent operators from accessing vehicle repair and maintenance information, as otherwise the objective pursued by that regulation, which is to enable those operators to compete with authorised dealers and repairers on the market for vehicle repair and maintenance information services, would be rendered ineffective.
- 44 For all of the foregoing reasons, the answer to the third and fourth questions is that Article 63 of Regulation 2018/858, read in the light of recital 52 of that regulation and the principle of equal treatment, must be interpreted as meaning that the concept of ‘reasonable and proportionate

fees', set out in that article, first, requires automotive manufacturers to take into consideration the commercial activity in which the vehicle repair and maintenance information is used by the different independent operators and, second, allows them to charge fees which go beyond solely the costs borne as a result of access to that information, which that regulation requires them to grant to those operators, on condition, however, that those fees do not have a deterrent effect for those operators.

Costs

- 45 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Eighth Chamber) hereby rules:

1. **Articles 61 and 63 of Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC, read in conjunction with Article 86(1)(4) and Article 86(2) of, and point 1 of Annex XI to, that regulation,**

must be interpreted as meaning that they apply to vehicle models which were approved under 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.

2. **Article 61(1) of Regulation 2018/858**

must be interpreted as meaning that the obligation which it imposes on automotive manufacturers to provide unrestricted, standardised and non-discriminatory access to vehicle repair and maintenance information, defined in Article 3(48) of that regulation, includes the obligation to allow publishers of technical information to process and use that information for the purposes of their activities in the aftermarket supply chain, without subjecting them to conditions other than those laid down in that regulation.

3. **Article 63 of Regulation 2018/858, read in the light of recital 52 of that regulation and the principle of equal treatment,**

must be interpreted as meaning that the concept of 'reasonable and proportionate fees', set out in that article, first, requires automotive manufacturers to take into consideration the commercial activity in which the vehicle and repair maintenance information is used by the different independent operators and, second, allows them to charge fees which go beyond solely the costs borne as a result of access to that information, which that regulation requires them to grant to those operators, on condition, however, that those fees do not have a deterrent effect for those operators.

[Signatures]