Non-Paper on alternatives to urgently mitigate the 2025 severe risk to the EU automotive industry arising from the current EU EV market

Overview

It is proposed that the European Commission proposes a Regulation on the basis of Article 122(1) of the Treaty on the Functioning of the European Union (TFEU) to temporarily delay the application by 24 months of the 2025 carbon emissions reduction targets under the [CAFE Regulation.](#) Indeed, the EU is in a crisis caused by low consumer demand for EVs and unfair competition from third country EV manufacturers meaning that the EU industry will not be able to meet these reduction targets. Consequently, EU industry will face billions of euros of penalties. As a result, EU industry will have little choice but to significantly cut production which threatens millions of jobs in the EU, harm consumers, and adversely impact the EU's competitiveness and economic security.

Background

- New steps in the reduction of the CO2 emission performance standards for cars and vans regulation (CAFE) are foreseen in 2025 and 2030 before the so-called ICE (Internal Combustion Engine) ban 2035. These steps represent significant challenges for automakers (OEMs) that could derail the whole transition (and the industry).
- CAFE 2025 foresees an average CO2 fleet emission of around 95 gCO2/km/vehicle, depending on OEMs. Penalties if the limit is exceeded can be counted in hundreds of millions of euros (95€/1g[1] CO2 in excess times the total cars sold) per OEM[2].
- As an electric vehicle (EV) is 0g and an efficient ICE can be on average around 120g CO2/km, this means that to sell 4 ICE in 2025, 1 EV needs to be sold (1EV=4ICE) to be compliant with the average 90-95gCO2 CAFE limit[3].
- For the overall EU market to be compliant with the CAFE 2025, the EV market share in passenger cars (and in vans) should therefore be around 20-22% (without non-EU brands imports). (Dataforce even suggests that for some OEMs the EV market share should reach 37%[4]).·Today, this market share has been stagnating for more than a year at less than 15% for EV PC (passenger cars) sales, and much lower for vans (around 7%) (12,4% year to date for PC according to ACEA[5])[6].
- This means that, if the market share of EVs remains at this level in 2025, EU OEMs, to be compliant with the regulation, will have either:
    - To stop the production and sale of more than 2 million ICE passenger cars and more than 700 000 vans (so that the EVs represent 20-22% market share), which is the equivalent of more than 8 EU factories.
    - To be exposed to penalties that could be reaching 13 billion euros for passenger cars and 3 billion euros for vans.

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1 No justification for this number has been found.

2There are no pure ICE that have emissions lower than 95.6g of CO2/km, and very few hybrid models that reach the CAFÉ threshold (in fact almost none). PHEVs will see their utility factor multiplied by 2.5 by Q4 2025, therefore also being at the limits of the CAFÉ threshold. By ways of consequence, the CAFÉ introduces de facto a minimum mix of EVs that OEMs must sell in order to be able to sell ICE vehicles. This percentage varies by OEM and is between 20 and 25% (ratio 1 to 4: you need to sell 1 EV to sell 4 ICE).

3 To reach ~96g on average, based on an ICE car at 120g, we need to sell an EV every 4 ICE cars so that the total emissions of 480g for the 5 cars reaches 440/5 ~96g.

4 https://www.dataforce.de/en/news/electrification-or-bust-how-oems-can-meet-2025-co2-goals/#/

5 https://www.acea.auto/pc-registrations/new-car-registrations-0-2-in-july-2024-battery-electric-12-1-market-share/

6 The Impact Assessment of the EU Commission did not take into account any economic and sensitive analysis on the evolution of the EV market vs possibilities for OEMs to comply and the impact of the penalties on the industry. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021SC0613

    - To drastically cut prices of EVs to reach the 22% market share. The Commission has however clearly proved the non-profitability of the EU EV industry[7]. This would have also a disastrous effect on the residual values of EVs which would jeopardize the whole value market[8].
    - To use the only flexibility foreseen in the regulation which is pooling but this would not be for free and would indirectly finance the EV industry of third countries. In any case, pooling would not be enough with the current EV market share in the EU.
- The CAFE targets for 2025 were set in 2019, based on data from 2016, on the basis of optimistic assumptions regarding the development of the EV market. We have to acknowledge that the market is not where it was expected[9][10] to be and OEMs cannot be the only one subjected to penalties (OEMs cannot be the only accountable party for an ecosystem problem: infrastructure, incentives, energy prices contribute as well). It is noted that after Germany, which cut subsidies in December 2023 (market fell by 30%[11]) France has announced cutting subsidies as well[12] complicating even more the achievement of the 22% EV market share target. Moreover, more than half of the Member States had an EV market share below 7% between January-June 2024[13].
- The lack of public charging infrastructures is also a bottleneck to electrification, (at least 4 out of 5 public charging points have yet to be installed in Europe for 2030)[14]. Europe needs to install 6.8 million charging points to cut CO2 emissions from passenger cars by 55% between now and 2030, in line with objectives (from the present rate of 2,000 points a week to 14,000)[15].
- Approximately, the missing volume of EU brands EV sales in 2025 will be of around 500 000 passenger cars (150 000 for vans).
- To avoid a disastrous scenario where OEMs would have to either finance 16% of the EU budget, decrease global production in the EU or finance third countries industries, an urgent intervention by EU decision-makers is required to safeguard both electrification targets and EU OEMs:
    - In all cases, expeditious support of electric vehicles roll-out via a pan-european subsidy scheme subject to an ecoscore (ex. at least an extra 3 billion€ representing 6000€/car for 500 000 passenger cars, around 1 billion euros for the same subsidy for vans). Greening of fleet initiatives at EU level (with differentiated targets/Member States) would also be welcomed (subject to ecoscore as well).
    - Reintroducing flexibilities as super-credits[16] that were present in the previous regulation (but this needs an amendment of the current regulation).
    - Allow a moratorium, a suspension or a softening of the CAFÉ target and/or penalties in a temporary fashion (1-2 years) to allow the EV market to develop to a degree allowing OEMs to comply with the regulation via article 122(1) of TFUE.

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7 https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401866

8 Exclusive: Tesla doing damage-control, discounts for European fleet buyers | Reuters

9 https://www.bloomberg.com/news/features/2024-09-02/vw-weighs-factory-closures-as-china-targets-europe-s-ev-blunders

10 https://www.lesechos.fr/industrie-services/automobile/rentree-morose-pour-le-marche-automobile-francais-2116497#:~:text=Constructeurs%20automobiles%20et%20concessionnaires%20vont,par%20rapport%20au%20mill%C3%A9sime%202023.

11 https://www.acea.auto/pc-registrations/new-car-registrations-0-2-in-july-2024-battery-electric-12-1-market-share/

12 https://www.lesechos.fr/economie-france/budget-fiscalite/budget-2025-le-projet-de-gabriel-attal-prevoit-des-coupes-fortes-pour-la-transition-ecologique-2115882

13 New car registrations: +4.3% in June 2024; battery electric 14.4% market share - ACEA - European Automobile Manufacturers' Association

14 According to McKinsey's Future Mobility report, 42% of non-EV owners can’t charge at home (vs. only 17% of today’s EV owners): https://www.mckinsey.com/features/mckinsey-center-for-future-mobility/our-insights/exploring-consumer-sentiment-on-electric-vehicle-charging

15 https://www.renaultgroup.com/wp-content/uploads/2024/03/lettrealeurope_digital-uk-1.pdf

16 https://www.eca.europa.eu/ECAPublications/SR-2024-01/SR-2024-01_EN.pdf

Proposed course of action:

- Amending the CAFE 2025 Regulation through the ordinary legislative procedure would usually be the most preferable legal route. However, it is considered that the extreme urgency of the situation and the threat of the crisis is giving the Commission competence to propose a Regulation based on **Article 122(1) of the TFEU**.

- The European Commission should urgently propose a Regulation to **delay** the planned introduction of the 15% reduction target in the CAFE Regulation **by 24 months from 2025 to 2027**.

Explanation:

The Scope of Article 122(1) TFEU

- Article 122(1) TFEU provides the Commission with the competence to propose "without prejudice to any other procedures provided for in the Treaties" measures to the Council who may decide "in a spirit of solidarity" on "measures appropriate to the economic situation". "In particular", they may adopt measures "if severe difficulties arise in the supply of certain products".

- The CJEU gives a wide discretion as to the content of measures that can be adopted under Article 122(1) TFEU. Notably, the CJEU has long held that it is possible to use Article 122(1) TFEU (previously Article 103 of the Treaty establishing the European Economic Community) to regulate areas covered by other EU legal basis regulation when the adoption of urgent measures is necessary (*Balkan-Imports*, para. 15). A recent study by the European Parliament on Article 122 TFEU comes to the same conclusion. It considered the phrase "without prejudice to" in Article 122(1) as "not prescribing an absolute priority of those other legal bases over Article 122(1) TFEU" (p. 43).

- The CJEU also gives the Council a wide discretion in the form of measures that can be adopted under Article 122(1) TFEU. It stated that "the Council may choose whichever [form] seems best suited to the case in hand", including that of a Regulation (*Balkan-Imports*, para 18). Indeed, in the past this power has also been used to adopt Regulations which amend or delay the application of certain provisions of EU Regulations and Directives, including those adopted pursuant to other legislative bases, e.g. Council Regulation (EU) 2015/1360, Council Regulation (EEC) No 3574/90) and Council Regulation (EEC) No 1370/90.

- Limits imposed by the EU caselaw on the use of Article 122(1) TFEU are that the adopted measures are temporary and it cannot be used to grant financial assistance to a Member State who are experiencing, or are threatened by, severe financing problems (see e.g. *Balkan-Imports*, para. 15, *Pringle*, para. 116 and *Anagnostakis*, para. 69).

Application of Article 122(1) TFEU to the current crisis

- It is noted, as does the European Parliament study on Article 122 TFEU, that Article 122(1) "is textually not limited to crises or emergencies" (p. 19). Nonetheless, it is considered that the current situation for EU industry is a crisis and emergency action is required. If no change is made to the current CAFE Regulation, then the EU automotive industry would be left with little choice but to significantly cut production which would have dire consequences for the entire EU.

- Paying the excess emissions penalties is not possible due to their disproportionately high level. It is estimated that the emissions premiums for EU industry will exceed 10 billion euros in 2025, an increase from 500 million in 2020. Indeed, in a European Court of Auditors Report, it noted that without the initial flexibilities in the CAFE Regulation (which have now been removed) EU manufacturers would have been subject to excess emissions premiums of more than 13 billion euros in 2020 (Report, para. 60). These penalties represent a significant portion of EU automotive yearly investments into electrification. If the EU industry is forced to pay these excess emissions premiums, the EU industry would even more fall behind competitors without a possibility to catch-up on electrification targets, in particular 2035.

- The only flexibility remaining in the CAFE Regulation, pooling, is also an untenable solution. This is a mechanism that allows manufacturers to club together to meet emissions targets together. However, as none of the major ICE European manufacturers is on track to meet their specific emissions targets, this means that the only manufacturers that EU OEMs can pool with are the third country EV OEMs. To the extent that such manufacturers are even willing to pool with European manufacturers, there will be a complete asymmetry in negotiating power with their EU counterparts. In other words, the current CAFE Regulation effectively places a strategic EU industry at the mercy of foreign suppliers. It could also undermine the effectiveness of other EU measures such as potential countervailing duties. It has to be underlined that the CAFÉ 2025 opens a business model for third country OEMs with EV overcapacity to sell at low cost EVs into the EU. By doing so they would take market share, get allowances for pooling and preventing EU industry from selling ICE and therefore finance EU electrification. Finally, with the current EV market share in Europe, pooling will not be enough to cover the excess emission.

- The consequences of this crisis would be devastating, not only for the EU automotive industry, but also for the entire EU. The EU automotive industry employs 2.4 million people in direct automotive manufacturing and 12.9 million jobs in total. This accounts for 8.3% of EU employment in manufacturing and 6.8% of total EU employment (see here). EU industry would be forced to cut production, starting with the most emitting and/or less profitable cars, namely entry-range vehicles. This would create severe difficulties in the supply of cars which would disproportionately affect the poorest EU consumers and disproportionately affect certain Member States[17]. Moreover, the current CAFE Regulation will create a greater dependency on third country EV manufacturers. Indeed, as investments in electrification will decrease, there will be less innovation and a slow-down in EU EV industrialization[18]. This puts the EU's economic security at risk given the strategic importance of EVs to the EU's green and digital transitions.

- Finally, only a temporary delay by 24 months of the CAFE Regulation's 2025 targets is requested. This would not involve granting financial assistance to a Member State who is experiencing, or is threatened by, severe financing problems. Therefore, there is no bar on using Article 122(1) TFEU in this context.

<u>Conclusion</u>

The EU EV industry is in a crisis caused by lack of EU consumer demand as well as unfair competition. Continuing to implement the current CAFE Regulation in this context would force EU industry to significantly cut production levels. This will threaten millions of jobs in the EU as well as the EU's competitiveness and economic security (by cutting down essential investments in electrification). It will also create a shortage in the supply of vehicles on the EU market, particularly of entry-level models disproportionately affecting the poorest EU consumers and increasing the EU's dependency on third country manufacturers.

It is considered that given this crisis, the European Commission can and should propose emergency legislation under Article 122(1) of the TFEU which temporarily delays the introduction of emissions reduction targets planned for 2025 by 24 months.

[17] The 6 countries with highest production volumes ICE PC are Germany, Spain, Czech Republic, Slovakia, France, Romania. For ICE LCV: Spain, France, Poland, Italy, Germany, Romania.
[18]Report, Marc Alochet, Comparison of the Chinese, European and American regulatory frameworks for the transition to a decarbonized road mobility, École Polytechnique, December 2023