

## End-of-life Vehicles (ELVs) in the EU – Proposal COM/2023/451 final

Recommendations for the integral protection of our motoring heritage: ensuring a sound regulatory framework for historic vehicles

FIVA appreciates the incorporation by the European Commission of the definition of historic vehicle in its ELV proposal, as provided by the Roadworthiness Testing Directive 2014/45/EU. This constitutes a step forward in the regulatory protection of historic vehicles and their visibility vis-à-vis regulators and society. At the same time, FIVA defends the right for EU Member States to adapt/complement the historic vehicle definition to their national circumstances. This can be better achieved through a Directive and not through a Regulation. This is why FIVA proposes that the ELV should remain a Directive.

FIVA welcomes the exemption of Historic Vehicles from the ELV regime. However, to ensure the integral regulatory protection of historic vehicles, several structural loopholes in the proposal need to be addressed. It is crucial for regulators to: (i) Ensure the owner's right to determine if a historic vehicle is ELV; (ii) Protect the restoration of used vehicles as a legitimate activity; (iii) Avoid a disproportionate interpretation and enforcement of the waste legislations which operate against motoring heritage; (iv) allow the legitimate sale, export and import of historic vehicles and their parts.

### FIVA's Recommendations

FIVA is convinced that European regulators can improve the regulatory protection of historic vehicles by adopting the following recommendations in the upcoming legislative debate:

- ❖ Ensure the **recognition of historic vehicles and their exemption from the ELV category** by the Member States when interpreting and enforcing waste and roadworthiness legislations;
- ❖ Provide for the presumption that **only an owner can determine whether a historic vehicle or their parts can be considered waste** to avoid owners from being prevented from restoring their vehicles. In the event that national authorities seize a vehicle, this presumption should prevail, protecting the owners or keepers until their actions or repeated omissions demonstrate that they will not reclaim it;
- ❖ Allow for Member States to **complement and adapt the definition of historic vehicles to their national circumstances**.
- ❖ Ensure the **exportability and importability of historic vehicles**, and vehicles and/or their parts due for historical restoration;
- ❖ **Allow for the dismantling** of a vehicle where the purpose is restoration – i.e. the dismantling is not “destruction” nor is the vehicle an ELV just because it is being dismantled for restoration;

- ❖ **Allow for components and parts to be retrieved** from an ELV in order to be reused in a historic vehicle (e.g. engines, gearboxes, etc.);
- ❖ Allow for the **sale and purchase of historic vehicle spare parts** by avoiding the imposition of disproportionate conditions for the legitimate selling of these spare parts;
- ❖ Allow for the fact that **repair/restoration values for historic vehicles may be disproportionate to the vehicle value**;
- ❖ Allow for the **implementation of changes in some of the technical characteristics** of historic vehicles without the vehicle losing its historic status;
- ❖ **Do not connect the registration system to the ELV system** as in some countries it is possible for historic vehicles to be de-registered if they are not being used for a period of time, to be in museums or used only off-road.

## Proposed Amendments

On the basis of these recommendations, FIVA proposes the following amendments to the current Commission's proposal – **additions in bold**:

**Title.** Proposal for a **REGULATION DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL** on circularity requirements for vehicle design and on management of end-of-life vehicles, amending Regulations (EU) 2018/858 and 2019/1020 and repealing Directives 2000/53/EC and 2005/64/EC.

*[As a consequence of this first proposed amendment, all references to "Regulation" must be read as "Directive"]*

### **Recitals. [...]**

**New Recital. Vehicles of historical interest conserve the heritage of the period during which they were constructed. This motoring heritage is a public good that deserves protection. Vehicles of historical interest and their parts, for their cultural value, must be regulatorily distinguished from old vehicles or ELV vehicles. When applying this Directive, Member States must be entitled to adopt further measures if these contribute to the regulatory protection of historic vehicles.**

### **Article 3. Definitions**

[...]

2. (2) In addition to the definitions referred to in paragraph 1, the following definitions shall apply: (a) 'waste', 'waste oils', 'waste holder', 'waste management', 'collection', 'prevention', 'recycling', 'recovery', 'backfilling', 'disposal' and 'extended producer responsibility scheme' laid down in Article 3, points (1), (3), (6), (9), (10), (12), (15), (17), (17a), (19) and (21), of Directive 2008/98/EC; **vehicles of historical interest and their parts and vehicles owned, stored, transported or dismantled with the purpose of restoration shall not be considered waste or not-roadworthy when applying the provisions relating to this Regulation as well as other legal instruments referred to by this Regulation.**

### **Article 26. Obligations for the vehicle owner**

(1) The owner of a vehicle that becomes an end-of-life vehicle shall:

(a) deliver the end-of-life vehicle to an authorised treatment facility or, in cases referred to in Article 23(4), to a collection point, without undue delay after receiving information that the vehicle meets any of the criteria for irreparability laid down in Part A, points 1 and 2, of Annex I; (b) present a certificate of destruction to the relevant registration authority.

**(2) vehicles of historical interest and their parts shall be excluded from the obligations described in paragraph (1).**

**(3) The owner of a vehicle of historical interest or their parts or of a vehicle owned, stored, transported or dismantled with the purpose of restoration, shall ensure that the vehicle is stored and transported properly, to maintain its state with appropriate protection against damage, in a manner that can be expected in the case of an object of historical and or collector's value and that is environmentally acceptable.**

### **Article 32. Trade of used, remanufactured or refurbished parts and components**

From [OP: Please insert the date = the first day of the month following 36 months after the date of entry into force of this Regulation] any **company or professional** person trading used, remanufactured or refurbished spare parts and components shall, at the point of sale:

- (a) ensure that parts and components are labelled in compliance with Part D, point 2, of Annex VII<sup>1</sup>;
- (b) provide a warranty for the used, remanufactured or refurbished parts and components.
- (c) these requirements shall not apply to **vehicles of historical interest and their parts as defined in this Regulation as well as to vehicles owned stored, transported or dismantled with the purpose of restoration.**

### **Article 37. Distinction between used vehicles and end-of-life vehicles**

For the purpose of transferring ownership of a used vehicle, the vehicle owner shall be able to demonstrate to any natural or legal person interested in acquiring ownership of the concerned vehicle or to the competent authorities that the vehicle is not an end-of-life vehicle. When assessing the status of a used vehicle, the vehicle owner, other economic operators and competent authorities shall verify if the criteria laid down in Annex I are met in order to determine whether it is not an end-of-life vehicle. **This requirement shall not apply to vehicles of historical interest and their parts and vehicles owned stored, transported or dismantled with the purpose of restoration.**

### **Article 38. Controls and requirements on the export of used vehicles**

1. From [OP: Please insert the date = the first day of the month following 36 months after the date of entry into force of this Regulation] used vehicles to be exported **outside OECD countries** shall be subject to the controls and requirements laid down in this Section.

[...]

3. Used vehicles may be exported only if they are:

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<sup>1</sup> Minimum information to be provided in the labelling of the parts and components:

(a) name of the component or part; (b) reference to the vehicle identification number (VIN) of the vehicle from which the component or part has been removed; and (c) name, the postal address, indicating a single contact point and e-mail address, a web-address, if applicable, identifying the operator that removed the component or part.

- (a) not end-of-life vehicles based on the criteria listed in Annex I;
- (b) considered roadworthy in the Member State where the vehicles were last registered, in accordance with Article 5(1), points (a) and (b), and Article 8 of Directive 2014/45/EU.
- (c) **vehicles of historical interest and their parts.**

**Annex I. Criteria for determination whether a used vehicle is an end-of-life vehicle. Part A Criteria for assessment of reparability of vehicles.**

[...]

**4. Vehicles of historical interest and their parts and vehicles owned, stored, transported or dismantled with the purpose of restoration, shall be considered reparable. Member states authorities shall not seize vehicles of historical interest and their parts and vehicles stored, transported or dismantled with the purpose of restoration, without the consent either explicit or resulting from repeated omissions by the owner or keeper.**

**ANNEX: explanations around FIVA's position on the ELV proposal**

**I. The incorporation of the Historic Vehicle definition: a positive improvement which needs to be complemented/adapted nationally**

The proposed ELV Regulation **incorporates the definition of historic vehicles** as provided by the Roadworthiness Testing Directive 2014/45/EU<sup>2</sup>, Article 3, point (7):

*“vehicle of historical interest’ means any vehicle which is considered to be historical by the Member State of registration or one of its appointed authorising bodies and which fulfils all the following conditions:*

- *it was manufactured or registered for the first time at least 30 years ago;*
- *its specific type, as defined in the relevant Union or national law, is no longer in production;*
- *it is historically preserved and maintained in its original state and has not undergone substantial changes in the technical characteristics of its main components;”*

The proposed new ELV law introduces the definition in articles 2.2(d) and 3.2(d), which constitutes a normative upgrade when compared to the position of the historic vehicle definition in the current Directive, as placing the definition within the articles of the instrument and not just in the Recital should reinforce the legal bindingness and full normative operativity of the definition. By incorporating the historic vehicle definition as provided in the Roadworthiness Testing Directive, which has also been

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<sup>2</sup> Directive 2014/45/EU of the European Parliament and of the Council of 3 April 2014 on periodic roadworthiness tests for motor vehicles and their trailers and repealing Directive 2009/40/EC Text with EEA relevance.



included in the Road Charging Directive<sup>3</sup>, the Commission is contributing to the building of a coherent regulatory framework for the protection of historic vehicles in Europe.

**For policy-makers and regulators at EU and national level, it constitutes a legal mandate to provide a regulatory framework that protects historic vehicles with the adequate legislation.** For society in general, it facilitates the recognition of motoring heritage as part of our historic heritage and contributes to the collective consciousness of the necessity of protecting historic vehicles. By exempting historic vehicles from the obligations otherwise required to an ELV vehicle, the European Commission recognises FIVA's raison d'être, based on the mantra "Reuse – Rework – Recycle", the basis of FIVA's sustainable activity, the restoration of vehicles.

**Notwithstanding the above, a Regulation would not be the best regulatory instrument to regulate ELVs in the EU. On the contrary, a Directive allowing Member States to adapt the historic vehicle definition to their national circumstances constitutes a way better solution.** The uniform application required by a Regulation is counterproductive in this ambit, where national circumstances and nuances are profound and require adaptations and differing interpretations among countries. Historic vehicles, precisely for their historic nature, have long-standing trajectories that can be traced back over the decades of a country's history.

An EU definition of historic vehicle is necessary and would contribute to the protection of motoring heritage. This has been clearly exemplified for instance with the Roadworthiness Testing Directive. However, an EU definition should not displace or exhaust the Member States rights to adapt or complement the definition to the national circumstances, like in the case of the Roadworthiness Testing Directive.

## II. Protect the restoration of used vehicles

**To promote and accomplish the objectives of circularity and reusability, the exemption granted to vehicles of historical interest to avoid their consideration as ELVs, should be extended to all those vehicles that are owned, stored, transported or dismantled with the purpose of historical restoration.**

A used vehicle, owned with the purpose of restoration, may not formally be a historic vehicle yet. In the same sense, a vehicle of historical interest may momentarily not fulfil all the conditions set forth in the ELV proposal to be considered a historic vehicle formally. This does not automatically turn these vehicles into waste or ELVs. The right to property of these vehicle owners needs to be respected and their voice needs to be heard.

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<sup>3</sup> Directive (EU) 2022/362 of the European Parliament and of the Council of 24 February 2022 amending Directives 1999/62/EC, 1999/37/EC and (EU) 2019/520, as regards the charging of vehicles for the use of certain infrastructures.

FIVA understands that the ELV proposal wants to increase the scrutiny or inspection over used vehicles. This is a legitimate and positive development to avoid environmental and security risks associated with used vehicles. However, this increased scrutiny cannot turn into a blanket ban of all used life vehicles, especially when these are owned with the purpose of vehicle historical restoration.

- ❖ An example of this can be the situation where historic vehicles are de-registered during a period of restoration, or just because the vehicle is not planned to be used for a while. This legitimate action does not automatically turn a vehicle into waste or ELV.
- ❖ Another example would be where a vehicle is dismantled – even almost completely – with the purpose of historical restoration. This process needs to be recognised as legitimate by national authorities – i.e. the vehicle is not ELV or waste just because it is being dismantled with the purpose of restoration. In this case, the economic cost of renovation is commonly much greater than the value of the vehicle, as the value of the vehicle itself is realised once the repair/renovation is complete.
- ❖ In fact, removing useable parts from a vehicle for these parts to be used in the restoration of other vehicles, is a contribution to the circular economy, in line with the principles of the ELV proposal “reusability, recyclability and recoverability” and FIVA’s “Reuse – Rework – Recycle” mantra. This is a relevant contribution for the achievement of EU and global environmental protection goals. A vehicle which is in a state to become waste may contain a functionally complete component (an engine, a gearbox, etc.) which has significant value as a replacement in a historic, or potentially historic, vehicle. These components must be allowed to be saved for use in repair/restoration of historic vehicles. Also, the economic cost of restoration is commonly much greater than the value of the vehicle – the value of the vehicle itself is realised once the repair/restoration is complete.
- ❖ In other instances, a vehicle owned with the purpose of historical restoration may undergo changes in its technical characteristics to make the restoration possible. This should not prevent these vehicles from being granted the exemption from ELV status.

From a regulatory point of view, **these situations can be solved by ensuring the owner’s right to determine by actions or repeated omissions when a used vehicle (or its parts) can be considered waste and when it shall be handed over to a treatment facility as ELV.**

### **III. Avoiding the disproportionate interpretation and enforcement of waste legislations**

Historic Vehicles cannot constitute waste and shall be protected against this mis-consideration. FIVA is still concerned about the distortion of the protection granted to historic vehicles by some member states authorities which have sometimes gone too far in their interpretation and enforcement of Waste legislation against the spirit of other EU Regulations and Directives.

FIVA members have suffered instances where vehicle owners have been denied the opportunity to restore and thus preserve a vehicle, as local authorities have determined that a vehicle is waste. In these cases, the authorities have ignored the fact that the owner had stated clearly the intention to restore the vehicle.

The situations where vehicles due for restoration and their parts are considered waste are regrettable because the actions of the historic vehicles' owners are intended to:

- ❖ Preserve cultural heritage;
- ❖ Avoid ending the life of a vehicle requiring environmentally costly recycling /treatment of the waste;
- ❖ Ensure the reusability of a vehicle;
- ❖ Generate work (usually for SMEs) – the restoration of a historic vehicle is a significant economic activity;
- ❖ Use the restored vehicle sparingly and safely, and maintain it to a high standard - the time and money is invested because of a passion for the vehicle, hence there is an inherent desire to look after it.

**This undesirable situation has been possible due to, in our view, a disproportionate application of the concept of waste by some national authorities.** Directive 2008/98/EC<sup>4</sup> defines waste in its art. 3.3: “‘waste’ means any substance or object which the holder discards or intends or is required to discard”. As explained above, in the current ELV proposal, article 2(d) contains a general exemption for historic vehicles in order for these to not be considered end-of-life vehicles. This general exemption is placed in the proposal before the reference to the Waste Directive in article 3.1(2). So, from a logical analysis of the law, the general exemption should prevail over the reference to the Waste Directive. In the same vein, the upcoming ELV Law, a vertical legislation, specific to vehicles, should also prevail over the Waste Directive, a horizontal, general legislation, on the basis of the *lex specialis* doctrine.

**Authorities must provide the presumption that only an owner of an historic vehicle can determine whether a historic vehicle is waste, to avoid owners from being prevented from restoring their vehicles.** On the other side, the vehicle owner or keeper must ensure that the vehicle or the vehicle parts are stored and transported properly, to maintain its state with appropriate protection against damage, in a manner that can be expected in the case of an object of historical and/or collector's value and that is environmentally acceptable. This represents a fair balance between the legitimate rights and obligations of the vehicle owner.

#### IV. Ensuring the legitimate export and sale of historic vehicles

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<sup>4</sup> Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives.



**The export and general sale of used vehicles for restoration is legitimate.** FIVA members have suffered instances where vehicle owners have been denied to import/export historic vehicles even in cases of legitimate purchases within the European Economic Area (EEA) or between Organisation for Economic Co-Operation and Development (OECD) countries, like the United States, Canada and Switzerland.

Within the current legal framework, ELVs are considered as hazardous waste as per the waste shipment regulation<sup>5</sup>, which bans their export from the EU to third countries which are not Members of the OECD – although, in some instances, even exports/imports to/from OECD countries have been denied by authorities.

We understand that the new ELV proposal is trying to toughen the requirements for used vehicles to be exported. Article 38.3 of the ELV Regulation proposal establishes that used vehicles may be exported only if they are: (a) not end-of-life vehicles based on the criteria listed in Annex I of the proposal; and (b) considered roadworthy in the Member State where the vehicles were last registered. This implies that the proposed Regulation sets up a new model where only roadworthy vehicles - passenger cars, vans, lorries and buses - would be authorised to be exported from the Union.

FIVA, which is a global organisation committed to road safety and safe environments internationally, agrees that ELV vehicles which are not suitable to be driven on the Union roads should not be exported to a third country. These used ELV vehicles can constitute a risk for road accidents and pollution in third countries, and they are sold only for the reason that they are cheaper.

However, there have been instances where national customs authorities – again – have gone too far, prohibiting for instance the import of a historic vehicle into Sweden from Norway, as well as from and into the United States, Canada and Switzerland (all of them OECD countries and some of them even EEA countries) in application of a disproportionate interpretation of the concept of waste and not-roadworthiness. This should not happen.

**The legitimate sale of historic vehicles from and to OECD countries should be always permitted.** For the purposes of historic restoration, used vehicles are legitimately sent to other countries for full restoration. Many times, historic vehicle enthusiasts do so because they want to have the technical people with the right skill for a restoration. It is very common that a historic vehicle is sent into a country and a year later is returned as a fully restored vehicle. This legitimate exchange should be permitted. This is especially the case for imports/exports between the EU, the EEA and the OECD countries, where shipments of historic vehicles do not bear the risk of camouflaging purchases of used, cheaper European vehicles that can no longer be used in Europe for technical and environmental standards. Historic vehicles sales and purchases among those countries are exchanges intended for

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<sup>5</sup> Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste.





vehicle restoration and constitutes an activity that generates economic growth and jobs in Europe and abroad.

**Like in the case of waste, historic vehicles owners have suffered a disproportionate interpretation of the EU law by some member states authorities, preventing the legitimate international sale and purchase of historic vehicles.** Despite the new ELV proposal exempts historic vehicles from their scope, and therefore from this toughened export regime, the regulatory risk remains if Member States go too far when applying the rules of vehicle roadworthiness or waste. The legitimate situation where a vehicle is being sold and exported because the purchaser intends to restore the vehicle should be always accepted. In these circumstances, the type of vehicle, the origin and destination of the shipment, the nature of the sale and the intent of the purchaser will provide ample information for it to be clear that the export is taking place to preserve a part of motoring heritage rather than being the sale of an old vehicle which is inappropriate for further use in a third country.

**The new ELV should hence make a clear provision for the legitimate sale and export of historic vehicles and their parts or of vehicles due for restoration by the new owner.**

#### About FIVA

The *Fédération Internationale des Véhicules Anciens (FIVA)* is a worldwide non-profit organisation dedicated to the protection, preservation and promotion of historic vehicles. Founded in 1966, it is the association uniting owners and collectors of historic vehicles around the world. Historic vehicles are therefore a part of our technical and cultural heritage.

FIVA's national member organisations represent around 1.5 million historic vehicle owners in the EU and around 2 million in over 70 countries worldwide. One of FIVA's core objectives is to ensure that historic vehicles can continue to be preserved and continue to be used on public roads. The cars, motorcycles, vans, trucks, buses, agricultural vehicles and steam engines of yesterday are our motoring and cultural heritage. Historic vehicles are contemporary witnesses of another era and it is essential to protect this heritage today and for the future. The historic vehicle movement brings enthusiasts together, but it also provides pleasure for many more as historic vehicle owners present a free riding museum of this heritage to the general public every time they drive their vehicles on public roads, or when they present their vehicles in the historic vehicle events and rallies held each year by historic vehicle clubs across Europe. Alongside the cultural and historical importance of historic vehicles, the preservation of the heritage also generates important economic activity.

FIVA defines a historic vehicle as a mechanically propelled road vehicle: which is at least 30 years old; preserved and maintained in a historically correct condition; and not used as a means of daily transport. Our EU Transparency Register number is 801754021924-61. We have consultative status with UNESCO. More information on [www.fiva.org](http://www.fiva.org)

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