

Electric scooters - who has done and who can do it better?

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The below text is an analysis of electric scooter regulations in selected EU Member States and comment on a possible EU initiative

Main points:

- Electric scooters (e-scooters) are a technological novelty that has quickly become popular worldwide. Being somewhat of a hybrid between a motor scooter and a bicycle, they have puzzled users and legislators alike – it is hard to define, in the known terms for law, what e-scooters are;
- some Member States have utilised already existing laws, e.g. bike laws, adjusting them a little to encompass e-scooters; some created special legal regimes for the devices. Electric scooters tend to be treated like bikes or motorcycles. The conclusion is, however, uniform – e-scooters need to be regulated;
- there is a gap in the Community law regarding e-scooters. A regulation or directive on e-scooter design safety could be produced, together with a set of guidelines for road use.

Introduction

Electric scooters, or e-scooters, appeared in the streets suddenly. And not only that – they immediately caught on, becoming a popular choice among city dwellers and tourists alike. Capable of going with the speed of, on average, 25-50 km/h, they render to be a convenient commuting means, additionally promoted as the answer to city traffic. Most, if not all, countries were rather unprepared for the technical advancement, struggling with the classification of e-scooters as vehicles, bicycles or anything else familiar to the legislatures. **E-scooters are micro-mobility devices,¹ which places them closer to bicycles than cars if the effortlessness or capacity for transportation is considered; nonetheless, if one takes into account the fact that they run on small engines, again, capable of reaching even around 50 kilometres per hour, it is difficult not to associate them with regular, motor scooters.**

The disagreement arises in, for example, whether a driver's license should be required to ride a scooter; or whether there should be age restrictions for the users. Some could think the devices

¹ OECD. 2020. “OECD Urban Studies Improving Transport Planning for Accessible Cities”. *OECD Publishing*: 28.

should have unique license plates, just like cars or motorcycles, whereas some could take the entire matter as too trivial to be of interest to law. Each EU Member State may answer to these dilemmas differently, and from the perspective of technology law, or just mere curiosity about the complexity of legislative processes, it is interesting to check which solution ought to be deemed the most pragmatic. The issue is serious enough, considering that e-scooters turned out to be often misused, even to the point of rendering them a threat to pedestrian safety. To give an example: in 2019, in Austria, around 1200 e-scooter users were hospitalised. The statistics in other countries do not look up. And if they do, it is rather because many national registries lack a special system for registering e-scooter-related accidents, consequently making those untraceable.²

Laws from selected Member States³

The obvious lack of contention about what e-scooters should be is what makes the topic interesting legislatively. For example, in France, electric scooters are to be driven only on roads outside of the cities, bringing them closer to cars likewise never allowed on sidewalks. Bike lanes are to be used in the cities; this, nevertheless, is conditioned.⁴ Interestingly, however, the lower age boundary for using the devices is 12 years, which might make some wonder whether this combination of laws is a wise choice. Poland or Germany allow e-scooters on bike lanes. Not to make it too uniform, however, the Polish legislator envisioned the possibility of driving on a pavement where there are no bike lanes and no pedestrians (under certain speed limits),⁵ and the German one, in an event of no bike path available, instructs to use the road. German laws state that the users of electric scooters must be above 12 years of age to legally operate e-scooters, and set one of the lowest thresholds for speed limits ranging from 12-20 km/h.⁶ Poland on one hand allows scooters on the pavement, which is rather unusual considering that it could

² Kamphuis, Kas and van Schagen, Ingrid. 2020. "E-scooters in Europe: legal status, usage and safety". *FERSI paper: 15*. <https://www.sicurstrada.it/Risorse/FERSI-report-scooter-survey.pdf> accessed 16 July 2021.

³ The selection was based on the character of the introduced laws, as well as the states' regional influence. The linguistic abilities of the author were also considered.

⁴ "Décret n° 2019-1082 du 23 octobre 2019 relatif à la réglementation des engins de déplacement personnel". <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000039272656/> accessed 16 July 2021.

⁵ "USTAWA z dnia 30 marca 2021 r. o zmianie ustawy – Prawo o ruchu drogowym oraz niektórych innych ustaw". *Dziennik Ustaw Rzeczypospolitej Polskiej*. <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210000720/O/D20210720.pdf> accessed 16 July 2021.

⁶ "Verordnung über die Teilnahme von Elektrokleinstfahrzeugen am Straßenverkehr 1 (Elektrokleinstfahrzeuge-Verordnung - eKFV) § 1 Anwendungsbereich". *Gesetze im Internet*. http://www.gesetze-im-internet.de/ekfv/_1.html accessed 16 July 2021.

facilitate accidents involving pedestrians, but simultaneously requires minors between 10-18 years of age to hold a driver's licence in categories AM, A1, B1 or T, or, a cycling proficiency certificate to ride an e-scooter. Adults are not obliged to have any of these. Such requirements stand out among many European laws making the Polish e-scooter laws an intriguing hybrid of a bike and regular, as it seems, scooter laws. E-scooters have become a separate type of vehicle under the Polish law.

Moving further, Spain has not only set speed limits (up to 25 km/h with a minimum of 6 km/h) but also set regulations that forbid wearing earphones or headphones while riding an e-scooter. Moreover, the state **is expected to impose the obligation to wear reflective vests and take out insurance for the scooter**; as of now, these actions are only advised. In the past, shortly, Spanish e-scooters were also to be registered similarly to cars; however, this obligation was abolished. Spain moved away from treating electric scooters car-like, banning them from streets in favour of bike lanes.⁷ Undoubtedly, the Spanish legislator has been one of the most engaged in creating a detailed safety regime for e-scooters.

Before the subsequent discussion can commence, one should notice that the Member States, despite their diverging approaches, rather agree in one aspect – that e-scooters are to be legalised in one way or another. A prominent exception to the rule is the Netherlands' decision to ban e-scooters. Instead, the Dutch legislator approved a new type of micro-mobility design which began trials in the city of Roermond in 2020. The vehicle resembles a regular scooter but is equipped with bicycle-like tyres and larger handlebars.⁸ The design is to ensure more safety.⁹

As established, Germany primarily utilises bicycle laws. This approach is often a starting point for many countries, as it seems, but deviations appear gradually. On the other hand, French or Spanish laws can be traced first and foremost to vehicle restrictions. **Scarce addition to the known system, following Germany's example, might be beneficial for simplifying the already intricate national legislatures and potentially an option to opt for in case of the**

⁷ "New rules for electric scooters on Spain's roads". *Think Spain*. <https://www.thinkspain.com/news-spain/32617/new-rules-for-electric-scooters-on-spain-s-roads> accessed 16 July 2021; "Electric scooters in Spain". *Car Insurance Spain*. <https://carinsurancespain.es/electric-scooters-in-spain/> accessed 16 July 2021.

⁸ The scooter can be seen in this video: https://www.youtube.com/watch?time_continue=10&v=yxzpg05-Ai8&feature=emb_logo accessed 17 July 2021.

⁹ "UK and Netherlands go in different directions on e-scooters". *European Transport Safety Council*. <https://etsc.eu/uk-and-netherlands-go-in-different-directions-on-e-scooters/> accessed 17 July 2021.

need for a swift reaction to a new phenomenon. Indeed, Germany introduced laws covering e-scooters as one of the first European states, already in June 2019.

Conversely, some countries, like Poland, created something self-contained, possibly tackling the problem in a pragmatic manner - taking a new phenomenon without forcing it into a known box. This decision is particularly interesting to all fields of law, resurfacing the question of whether multiplying actors or objects is a good idea. Logically, it might seem so, understanding that micro-mobility devices, especially those of novel types, are not anything that had to be regulated before. Acknowledging the nuances allows for more precise tackling of the possible dangers, which may be the ultimate goal behind the regulation as such.

Neighbour examples show slightly divergent regulatory approaches, and these are worth remarking upon. For instance, Great Britain somewhat inhibits the use of e-scooters by imposing significant hurdles for the users. First of all, privately owned electric scooters are illegal to be ridden in public spaces. Officially licenced e-scooters are to be used only in selected cities and areas by people holding driver's licences of type Q, which is included in those of categories AM, A or B. These criteria significantly narrow the possibility of use. **The official message, as implemented by the powers, however, is that e-scooters might just be the solution for swift, economic and ecological transportation within cities.**¹⁰

The aforementioned national laws mostly regulate the use of e-scooters. Yet, many Member States also introduced product-specific criteria, obliging the producers to equip the devices with a light, noise-making device, etc. These function as an addition to what may be overseen by, for example, the Safety Product Directive (mentioned below). Furthermore, the e-scooter producers themselves aid in guaranteeing safety, sometimes beyond what is required by law; this, in some sense, halts the necessity of a regulation of a particular aspect or element. This, certainly, is also a smart competition move especially in those Member States that limit the influx of new e-scooter companies entering their markets. An example of such an initiative may be the 'drunk' puzzle, added by Bird, one of the most popular e-scooter companies alongside Lime. To start the scooter, one must type a requested word and approve it.¹¹ This is

¹⁰ Department for Transport. 13 July 2020. "E-scooter trials: guidance for users". *Gov UK*. <https://www.gov.uk/guidance/e-scooter-trials-guidance-for-users> accessed 17 July 2021; 2021. "Regulating electric scooters (e-scooters)". *House of Commons Library*.

¹¹ Toll, Micah. 15 July 2021. "Bird is adding a puzzle to its electric scooters to keep drunk riders off". *Electrek*. <https://electrek.co/2021/07/15/bird-is-adding-a-puzzle-to-its-electric-scooters-to-keep-drunk-riders-off/> accessed 18 July 2021.

what some deem code regulation – influencing the behaviour not through laws but code, directly preventing the undesirable behaviour of riding drunk. Nevertheless, such regulation has its limits and no matter the efforts, official control is desirable.

Applicable EU rules

When it comes to EU rules, presently, e-scooters fall under the jurisdiction of some legal acts. First and foremost, e-scooters, as products when manufactured for the public, are regulated by the provisions of the Product Safety Directive.¹² Besides that, e-scooters may be governed by Regulation No 168/2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles;¹³ but only in countries where they are to be used on roads. This particular condition might prevent the applicability of the legal document seeing that e-scooters are, overall, permitted to be driven on bike lanes, roads, or pavements, depending on the situation. On the other hand, clearly, they do not fall under the Machinery Directive, having been listed among the exceptions in Article 1(2)(e).¹⁴

When considering if the EU should be interested in proposing any specific laws on e-scooters, one needs to establish what rules one has in mind. As already noted, the quality and handling of a scooter produced to the public as a product is somewhat regulated by the Product Safety Directive. The aforementioned Regulation¹⁵ deals with the approval of vehicles only, if it is even applicable. **Hence, what is missing, and what has been the problematic aspect of the e-scooter exploitation, is the rules governing the actual consumer use. And these fall under transportation. Certainly, on top of this, the EU could consider some specific laws on the creation of e-scooters that could ensure more safety as well, taking that the Machinery Directive is not applicable.**

¹² Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (Text with EEA relevance) Official Journal L 011 , 15/01/2002 P. 0004 - 001.

¹³ Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles Text with EEA relevance OJ L 60, 2.3.2013, p. 52–128.

¹⁴ Directive 2006/42/EC of the European Parliament and of the Council of 17 May 2006 on machinery, and amending Directive 95/16/EC (recast) (Text with EEA relevance) OJ L 157, 9.6.2006, p. 24–86.

¹⁵ Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles Text with EEA relevance OJ L 60, 2.3.2013, p. 52–128.

The Union's legislative capabilities

The EU's capabilities are based on the conferral of powers, which means that the EU has the right to intervene only when the Treaties allow it to. The Member States agreed to dilute their sovereignty in some situations, and this may not be circumvented by the Community. Articles 3-6 of the Treaty on the Functioning of the European Union (TFEU)¹⁶ outline which areas of interest are to be exclusively regulated by the Union, which by the Member States, and in which the competencies are shared.

Relevantly, Article 4(2) TFEU states that a legislative initiative is granted to the Union together with the Members States in the areas of:

- ‘(a) internal market;
- (b) social policy, for the aspects defined in this Treaty;
- (c) economic, social and territorial cohesion;
- (d) agriculture and fisheries, excluding the conservation of marine biological resources;
- (e) environment;
- (f) consumer protection;**
- (g) transport;**
- (h) trans-European networks;
- (i) energy;
- (j) area of freedom, security and justice;
- (k) common safety concerns in public health matters, for the aspects defined in this Treaty.’¹⁷

¹⁶ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences. Official Journal C 326 , 26/10/2012 P. 0001 - 0390.

¹⁷ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences. Official Journal C 326 , 26/10/2012 P. 0001 – 0390, Article 4(2).

Here, there is the underlying permission to initiate laws, be it in the form of a regulation, directive or another legal act. The character of the intervention is, however, further concretised. Article 169(1-2) TFEU speaks of the Union's obligation to promote consumers' well-being and interests; however, if not done directly for the benefit of the internal market, as the action is permitted by the famous Article 114 TFEU, these ought to be only 'measures which support, supplement and monitor' the policy pursued by the Member States.¹⁸ This prevents the legislative intervention of the Union and points in the direction of supporting national laws. When it comes to the legal ground under the head of transport, regulation for the purposes of transport safety 'measures to improve transport safety' are permitted under Article 91(1)(c) TFEU.

Possible – yet is it desirable?

Hence, in principle, EU's legal intervention is possible here; but the question is whether the EU should intervene – overall, the granted competence is shared. Therefore, it must be assessed whether a Community action is needed and due. The EU, besides the limits set by the Treaties, is restricted by the principles of proportionality and subsidiarity, two of the fundamental rules underlying the entire existence of the Union. The principles are laid out in Article 5 of the Treaty on the European Union.¹⁹ The former speaks of the action of the EU being limited to what is necessary to achieve the objectives of the Treaties. The latter aims to ensure that decisions within the Community are taken as closely as possible to the citizen, which translates into taking action on the Union's level only when it would render to be more effective than on the national or local level. **Putting it succinctly, the EU will act as minimally as possible, if necessary at all.** But how to assess whether the action is in fact necessary or redundant? This is a matter deserving a lengthy, rich deliberation of its own, which in this article will be reduced only to delineate the possible legal routes. There are no set-in-stone tests to be used but rather guidelines and widely-used criteria to be considered. 'Would action at EU level produce clear

¹⁸ Article 169(2)(b) of Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on the Functioning of the European Union - Protocols - Annexes - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences. Official Journal C 326 , 26/10/2012 P. 0001 - 0390.

¹⁹ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union - Consolidated version of the Treaty on European Union - Protocols - Declarations annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007 - Tables of equivalences. Official Journal C 326 , 26/10/2012 P. 0001 - 0390.

benefits because of its scale or effects, compared with action by the Member States? Does the subject matter have trans-national aspects that cannot be regulated by the Member States acting separately?’ to take from some already-used formulas.²⁰ An interesting aspect to consider, having examined the contemporary national environment in this analysis, is whether what has been done is insufficient in a wider perspective.

Seemingly, the aforementioned questions should be answered in the negative. Even when a law is lacking, the national legislators are quick to amend the situation, utilising the known and novel solutions. The only major issue could be the divergence of laws across the Union. But is that a hurdle the Community should be concerned about? Clarity and unity of laws are a comfort any EU citizen likes to enjoy. Having one’s qualifications or identity recognised without a hinge is a convenience that is not granted in all areas, however, some examples being car speed limits, which one must check before crossing the internal borders. And all in all, an inconvenience does not equal a problem.

Yet, to ensure safety, laws on comprehensive, product-specific design could be introduced, just to fill in the gap which the exceptions to the Motor Directive create. This, as said, is in principle not possible for the Union, as barred by the criteria of Article 169(1-2) TFEU. **Nevertheless, leaving it to the gesture of the countries may also create product discrepancies, which may even hinder the internal market through impaired sales or transport-related exchanges.** This the Community can and ought to prevent, per Article 4(2)(a) TFEU, e.g. via the creation of legislation using the legal ground granted by the aforementioned Articles (Article 169(1-2) TFEU and 114 TFEU). This legislative route simply renders to be the most straightforward, answering the principle of subsidiarity. And, relevantly, this channel allows to answer the aforesaid questions affirmatively.

When it comes to the other types of rules, any direct road regulations from the Union’s level seem to be undue, in light of the principle of subsidiarity. There is no precedent for employing strict road rules on the Member States, and with the other laws serving as a safety buffer, it could just appear excessive or redundant. Importantly, nonetheless, the European Commission has engaged in assisting the promotion of good practices, which includes legislative advice.²¹

²⁰ Thomas, Mike. November 2009. “Subsidiarity: Assessing an EU Proposal”. *House of Lords*. <https://www.parliament.uk/globalassets/documents/lords-committees/eu-select/subsidiarity/apply-subsubsidiarity.pdf> accessed 19 July 2021.

²¹ For example: “Road safety: Policy orientations on road safety 2011-20”. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legissum%3Atr0036> accessed 19 July 2021.

Hence, intervention, yet subtle, is possible; a set of non-binding road safety guidelines or recommendations could be produced, inspired by the contemporary national legislative initiative, to facilitate transnational knowledge exchange.

Conclusion

Taking all of this into consideration, it seems that the EU could be interested in having a closer look at the e-scooter regulations, providing the Member States with legislative relief or guidance. What has been achieved already nationally ought to be scrutinised, especially because the regulations were issued even in 2019, giving some time to allow for an appropriate and fairly reliable overview. Product-detailed safety directive or regulation is desirable (being a topic for another conversation), just to ensure that citizens across the Union are safe, even from e-scooters.

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