



**CLEPA Statement in response to
the Report of the European Commission, dated 28 May 2008
regarding the Motor Vehicle Block Exemption Regulation (EC) No 1400/2002**

Public version

CLEPA is the European umbrella membership organisation representing the interests of the global automotive supply industry. 75 of the world's most prominent suppliers for car parts, systems and modules and 27 national trade associations and European sectoral associations are members of CLEPA, representing more than 3,000 companies, employing more than three million people with a turnover of more than 300 billion Euros and covering all products and services within the automotive supply chain. More than 50% of Research & Development spending and 75% of the car value come from suppliers.

I General Comments:

1. CLEPA agrees with the Commission's statements describing the competitive environment on the motor vehicle distribution markets as appearing to have considerably improved. CLEPA believes that, whilst there have also been positive impacts from external factors which have improved competition particularly in the sale of new vehicles, the introduction of Regulation (EC) No 1400/2002 (the current "MVBER") and the subsequent discussions and enforcement actions have all served as major factors. Especially the detailed provisions of the MVBER in Article 4 (1) (g) through to (l) and Article 4 (2) MVBER have improved legal certainty for the market participants as a basis for decisions in the day-to-day business and thereby have protected the independent repairers' access to technical information and spare parts more effectively than was previously the case, in the absence of these provisions.

2. CLEPA believes that the reasons for introducing the MVBER are still valid and advocates that the provisions of the MVBER are neither obsolete nor can be easily substituted.

For the benefit of the consumers, it is important to maintain:

- a) Effective competition in the market for spare parts, which depends largely on the ability of suppliers of original equipment (OES) to sell their products - as supplier-branded spare parts of original quality - to independent and authorised aftermarket operators, and

- b) Effective competition in the markets for servicing and repair, which depends largely on full access for all aftermarket operators to repair information for the whole car park, including heavy commercial vehicles. In particular, such information needs to be available as required for multi-brand workshops, publishers, road assistance providers and manufactures of diagnostic tools. Electronics are now extensively used in vehicles with additional electronic devices and the use of multi-plexing systems in the vehicle architecture.

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Diagnostics and repair functions have become increasingly complex and require more and more use of electronic diagnostic tools and access to vehicles' technical and electronic data.

These two essential points must be assured, following the expiry of the current MVBER in 05/2010

- preferably within a sector-specific BER, or
- in sector-specific provisions within a general BER, or
- in other binding legislation.

3. CLEPA insists that any future set of norms must be worded as clearly and as detailed as possible, together with the associated explanations as is the case in the MVBER and the Explanatory Brochure today. The reason for this is to sustain legal certainty, as under the current MVBER and to ensure a clear message to the participants in the aftermarket to avoid any misinterpretation that the Vehicle Manufacturers (OEM) could assert more freedom to withhold technical information, or to limit the sales of supplier-branded OE parts or parts of "matching quality".
4. If the Commission - for superordinate reasons - decides to protect the above- mentioned basics for effective competition (see sections 2. a) and b)) by any future system of norms, CLEPA requests the Commission to publish clarifying concomitant annotations providing a clear message to the market, that the new systematic legal approach actually does not provide more freedom to the OEM for limiting (a) the access to repair information and (b) the ability to sell supplier-branded spare parts of original quality than under all the current detailed rules as specified in Article 4 MVBER as of today. The Commission is expected to confirm in such annotations that all the detailed rules in Article 4 (1) (g) through to (l) and Article 4 (2) MVBER under the future system of norms will continue to apply as strictly as under the current MVBER.



II Key issues in detail from CLEPA's point of view:

1. Direct aftermarket sales of parts and equipment by an OES

CLEPA finds that the ability of the OES to sell products as spare parts in the after-sales market is essential for securing multiple distribution channels, and thus freedom of choice in the markets for spare parts. Therefore, the rules and principles currently embodied in Art. 4 (1) (j) MVBBER are essential for effective competition.

2. Freedom of choice for authorised repairers

CLEPA believes that it is important for repairers, whether authorized or independent, to be able to procure spare parts, repair tools or diagnostic or other equipment from a variety of sources (on sound competition grounds). Different providers of spare parts and such equipment need to be given the opportunity to compete fairly with each other, just as repairers must be free in their choice of the source of spare parts and repair equipment.

3. Dual Branding

CLEPA advocates that a hard-core restriction on the ability of the OES to place their own logo on a component, supplied as original equipment should be maintained. OES report to CLEPA for markets outside EU, that OEMs generally request single-branded parts from their .Only due to the existence and clear language of Art. 4 (1) (l) MVBBER, the OEMs are prepared to negotiate about dual branding for the EU market.

Aftermarket operators report that the presence of a logo is a practical help in identifying the true origin of a component. This observation is in line with Recital 24 MVBBER, according to which authorized and independent repairers and end-users should be able to identify the manufacturer of a spare part to choose between competing providers. Therefore, Art. 4 (1) (l) MVBBER is considered indispensable.

4. Access to technical information, tools and training

CLEPA acknowledges that another key for competition in the aftermarket is the equal access to repair information for all vehicles, both the existing car park and newly type-approved ones (including Heavy Commercial vehicles). As problems were repeatedly observed in this respect, it was necessary for the Commission to take enforcement action. CLEPA urges the Commission to continue on this path, and to further monitor and clarify the situation for all independent operators, which includes the publishers of technical information.



5. Tooling arrangements and subcontracting

CLEPA takes note of restrictions imposed on the ability of an OES to supply its products to the after-sales-market. The paper refers to the use of tooling arrangements. In this area, clear provisions, guidelines or clarifying statements are needed.

The matter is by no means confined to agreements that fall within the scope of the Subcontracting Notice from December 1978. Rather, the Subcontracting Notice rarely applies to agreements between an OEM and an OES. In the automotive sector, an OES, especially in the tier 1 situation, is normally a specialised provider of components with substantial know-how of its own, and can rarely be seen as an extended workbench. Therefore, restrictions imposed on an OES should normally fall within the scope of Art. 81 (1) EC.

Requiring an OES to transfer the title to tooling or IP manufactured or developed by the OES is unacceptable where the OES made the development and manufacture of the IP or tooling

6. Warranties

CLEPA believes that consumers should never be tied to a specific network of repairers by means of restrictive warranty terms.

Experience shows that the ability of independent repairers to provide service and repair work during the warranty period is largely not understood by consumers. The motorists' ability to have a vehicle serviced at the workshop of their choice should never be limited. Where restrictive warranty terms are tolerated, consumers hope to maintain rights by patronising authorised workshops only, in which case independent repairers become unable to compete, and the market for servicing and repair of cars of the respective brand is likely to be foreclosed. Similarly, the market for parts suitable for vehicles of the respective brand is under risk of foreclosure where warranty terms effectively limit the choice of parts or workshops. The ability of independent parts providers to sell quality parts obtained not from the OEM, but from a third party (such as the OES) should not be limited as a result of warranty terms.

Conclusion:

In the light of the above, CLEPA strongly advocates that in the event of no extension of the MVBBER aftermarket rules after 2010 for superordinate reasons, the policy goals of fair competition pursued by the MVBBER must clearly be preserved and heralded with and in appropriate instruments and concomitant annotations by the Commission. The official understanding of the Commission in the concomitant annotations would be a strong and indispensable signal to the market players.

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Signed:

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