



EUROPEAN COUNCIL FOR MOTOR TRADES AND REPAIRS  
CONSEIL EUROPÉEN DU COMMERCE ET DE LA RÉPARATION AUTOMOBILES  
EUROPÄISCHER VERBAND DES KRAFTFAHRZEUGGEWERBES

## **Code of Contractual clauses and practices to be respected in Vehicle Manufacturer / Authorised Dealers and Repairer contractual relations**

Proposed Code of Contractual clauses and practices related to contractual relationships between motor vehicle manufacturers and dealers or authorised repairers of motor vehicles (passenger's cars, commercial vehicles and buses).

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(the "Parties" in the following)

considering as follows:

- a) Commission Regulation (EC) no. 1400/2002 on the application of article 81, paragraph 3 of the EC Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector contains provisions related to contractual relationships between motor vehicles manufacturers and dealers or authorised repairers;
- b) such provisions particularly relate to: the resolution of contractual disputes through independent experts or arbitrators; the minimum notice period in the event of withdrawal or the lack of renewal of the agreements related to the purchase, sale or resale of new vehicles or spare parts or the provision of repair or maintenance services of vehicles; the reason for the withdrawal or lack of renewal of the said agreements; the transfer of the rights and obligations resulting from such agreement on the part of a dealer or repairer to another dealer or repairer within the distribution system and chosen by the former dealer or repairer;
- c) the European Commission does not intend to extend the said regulation no. 1400/2002, which will expire on 31 May 2010 for the aftermarket and on the 1<sup>st</sup> June 2013 for the primary market; that means that the provisions set out in the previous point shall no longer apply;
- d) nevertheless, the Parties mutually believe that the said provisions refer to some good business practices that they are interested in continuing to apply in their business relationships;

they adopt the following

Code of contractual clauses

### **Article 1 - Scope of application**

1. This Code of conduct applies to contractual agreements between the individual vehicle manufacturer and the members of sale and service network covered by Regulation no... related to the application of article 81, paragraph 3 of the EC Treaty for categories of vertical agreements and concerted practices.
2. For contractual agreements one means those related to the sale of new motor vehicles, spare parts and the repair and maintenance services.
3. For new motor vehicles one means the new building vehicles that are still not registered or registered with the competent authorities as well as the unregistered vehicles that are in the name of the dealer/repairer and are authorised for no more than six months without mileage.

## **Article 2 - Fair contracts and treatment of all members of the network**

- (a) A fair contract can only be concluded after meaningful negotiation where each party takes the needs of the other party into account and provides the other party with all the necessary information before concluding the agreement and during the agreement.
- (b) There is to be no discrimination between members of the same network.
- (c) The principles laid out in this Code must apply to the contractual relationship between the vehicle manufacturer and its entire network, including its owned outlets.

## **Article 3 - General conditions**

1. Parties agree that the vertical agreement concluded with a distributor or repairer provides that the supplier agrees to the transfer of the rights and obligations resulting from the vertical agreement to another distributor or repairer within the distribution system and chosen by the former distributor or repairer.
2. Parties agree that the vertical agreement concluded with a distributor or repairer provides that a supplier who wishes to give notice of termination of an agreement must give such notice in writing and must include detailed, objective and transparent reasons for the termination, in order to prevent a supplier from ending a vertical agreement with a distributor or repairer because of practices which may not be restricted under this Regulation.
3. Parties agree that the vertical agreement concluded by the supplier of new motor vehicles with a distributor or authorised repairer provides
  - (a) that the agreement is concluded for a period of at least five years; in this case each party has to undertake to give the other party at least six months' prior notice of its intention not to renew the agreement;
  - b) or that the agreement is concluded for an indefinite period; in this case the period of notice for regular termination of the agreement has to be at least two years for both parties; this period is reduced to at least one year where:
    - (i) the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or
    - (ii) the supplier terminates the agreement where it is necessary to re-organise the whole or a substantial part of the network.

4. Parties agree that the vertical agreement provides for each of the parties the right to refer disputes concerning the fulfillment of their contractual obligations to an independent expert or arbitrator. Such disputes may relate, inter alia, to any of the following:

- (a) supply obligations;
- (b) the setting or attainment of sales targets;
- (c) the implementation of stock requirements;
- (d) the implementation of an obligation to provide or use demonstration vehicles;
- (e) the conditions for the sale of different brands;
- (f) the issue whether the prohibition to operate out of an unauthorised place of establishment limits the ability of the distributor of motor vehicles other than passenger cars or light commercial vehicles to expand its business, or
- (g) the issue whether the termination of an agreement is justified by the reasons given in the notice.

The right referred to in the first sentence is without prejudice to each party's right to make an application to a national court.

### **Obligations of signatories**

The signatories of this Code of Conduct will undertake themselves to ensure that their respective members include the clauses of this Code in each dealer or repairer agreement as it forms the basis for determining good faith in the contractual relationship between a supplier and dealer or repairer.

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