

Frequently Asked Questions

During the transition period¹ provided for in Article 10 of Regulation 1400/2002, the Commission received a number of questions relating to the application of the Regulation. Where those questions have been frequently asked, or are likely to be of wider interest, they are reproduced below together with answers. These questions and answers are intended to complement the Explanatory Brochure to the Regulation², and do not replace it.

Questions concerning the sale of new motor vehicles

CONSUMERS BUYING A CAR ABROAD

- 1. Should a consumer who has bought his vehicle in another Member State have to wait before he can have repairs carried out under warranty in his home country or elsewhere in the EU?**

No. Under the Regulation, manufacturers' warranties issued in one Member State must be valid under the same conditions in all other Member States. Manufacturers are free to implement this requirement in different ways, and may for instance have a single European warranty database, or a separate database in each Member State. Where a manufacturer chooses to have separate national databases, a consumer with a warranty book filled out by a dealer in another Member State should not have to wait for that warranty to be honoured in his home country. Nor should the dealer or authorised repairer to whom the consumer brings his vehicle impose any charge or require additional documentation before entering the warranty into a national warranty database.

See also the reply to question 34 in the Explanatory Brochure.

- 2. If a consumer buys his car through an intermediary (purchase agent), when does the warranty start to run, and when does it expire?**

In selective or exclusive distribution systems, such as those commonly used in the motor vehicle sector, the warranty commonly starts to run on the date the vehicle leaves the authorised network. Where a consumer uses an intermediary (purchase agent) to buy a car on his behalf, the warranty will therefore normally start to run when the authorised dealer delivers the vehicle to the intermediary. This may mean

¹ Which expired on 30 September 2003.

² Published by DG Competition and available on the Internet at http://europeu.int/comm/competition/car_sector/distribution/

that when the consumer takes delivery of the vehicle, a short period of the warranty has already elapsed³.

The Regulation does not, however, prescribe when a manufacturer's warranty will expire. It is open to suppliers to have a more favourable policy according to which, for instance, a "two-year" warranty on an imported vehicle does not expire until two full years after the car's details have been entered into the warranty database of the authorised network in the Member State where the vehicle was imported.

3. Under what circumstances can the supplier⁴ require a dealer to ask for further documents before selling a vehicle to a consumer or to someone purporting to be an intermediary acting on a consumer's behalf?

The general rule, as the Explanatory Brochure makes clear⁵, is that suppliers may not require dealers to ask for any more than a signed mandate from the individual consumer. In addition, if a supplier normally requires a dealer to ask his local customers to provide a copy of a passport or identity card when they buy a vehicle, he may do the same as regards consumers from other parts of the EU. The same goes for intermediaries, who may be asked to produce similar documentation proving their clients' identities.

The supplier may also require the dealer to take further measures **in individual exceptional cases** where he has good reason to suspect that the consumer or the undertaking putting itself forward as an intermediary intends to re-sell the vehicle when new for commercial gain.

4. Can the supplier require a dealer to get an intermediary to sign an undertaking to the effect that he does not intend to sell a new vehicle for commercial gain?

If the supplier has **good reason** to suspect that a given intermediary has been using false mandates to acquire vehicles for resale, he may require the dealer to get the intermediary to sign an undertaking to the effect that it will not re-sell the vehicle.

It is obvious however that if an intermediary has provided evidence of his customer's identity, such as a copy of a passport or identity card, this should in itself be sufficient proof that the mandate is valid and that the intermediary is genuinely acting on behalf of a consumer. In such cases, in the absence of clear evidence of deception, it would be an unnecessary restriction⁶ if the supplier were to ask the dealer to get the intermediary to sign an undertaking.

³ Some purchase agents may decide to "top up" the warranty, so that the consumer benefits from the full warranty period offered by the manufacturer.

⁴ The term "supplier" includes vehicle manufacturers, importers of the brand in question, and wholesale distributors.

⁵ See section 5.2 of the Explanatory Brochure.

⁶ See Article 4(1)(b) and (c) of Reg. 1400/2002, and more particularly Recital 14.

It is also obvious that if a firm acts as independent reseller in some cases and as intermediary in others, without any evidence of misrepresentation, this does not justify requiring the firm in question to produce documentation over and above a signed mandate.

Moreover, if the dealer has regularly dealt with a given firm, without there being any evidence that that firm has resold vehicles that it purported to purchase as an intermediary, the supplier may not ask the dealer to systematically get the intermediary to sign undertakings⁷. If the supplier were to do this, this would be likely to be considered to be an indirect restriction on sales to consumers and a serious restriction of competition.

See also the answer to question 29 in the Explanatory Brochure, which relates to a requirement for a **consumer** to sign an undertaking that he will not resell the vehicle.

MULTIBRANDING

5. What practical requirements can a supplier impose on a dealer wishing to sell brands from competing manufacturers?

If a supplier's distribution network is to be exempted under the Regulation, dealers must have a real and exercisable opportunity to sell brands of competing suppliers. The new Regulation does not however seek to define in detail what a supplier may require of a multi-brand dealership that sells one or more of its brands. Firstly, this would have been impractical, given the variety of elements involved. Secondly, and most importantly, such an approach would not have taken account of the differing characteristics of dealerships, in particular in terms of location and size.

What might be an acceptable requirement for one dealership wishing to multi-brand could be a non-exempt non-compete obligation if applied to another.

Plainly while certain facilities, such as parking spaces, customer toilets, seating areas, and coffee machines may be required by a supplier, these should never be reserved to a particular brand.

Certain requirements may need to be relaxed or dispensed with altogether if they would otherwise make multi-branding difficult in practical or cost-related terms, having regard to the characteristics of the dealership in question. A requirement to have a specific reception desk for the brand would have to be dispensed with if, for example, shortage of space or other practical considerations made operating separate desks for each brand unduly difficult. Requirements such as those relating to the showroom area available to the brand, or the number of vehicles of the brand to be exhibited in the showroom, may also have to be relaxed.

Suppliers may also have to adapt so-called "corporate identity" requirements so as to ensure that they do not constitute a barrier for a dealer who wishes to take on the

⁷ However, where a supplier requires a dealer to ask end users to sign undertakings to the effect that they will not resell a vehicle, it may do the same in respect of intermediaries.

makes of competing manufacturers. The implications of this will vary, depending on the characteristics of the dealership concerned. Plainly, there will be circumstances where, for example, it will be difficult for a dealership with a limited showroom area to take on an additional brand unless many of the requirements⁸ are relaxed. If the supplier gives funding to help a dealer who wishes to take on an additional brand to meet that supplier's own corporate identity requirements, this must not have the effect of making it difficult for the dealer to sell the extra brand.

Dealership agreements should make clear provision for multi-branding, and should make plain that requirements that constitute obstacles to multi-branding will be adapted or dispensed with should a dealer wish to take on brands from competing suppliers.

The parties must be free to refer any disagreement as to whether or not a given requirement has to be dispensed with or adapted to an expert third party or arbitrator.

6. Can a supplier who supplies two or more brands of motor vehicle require the dealer to display those brands in separate showrooms?

The aim of the Regulation as far as multi-branding is concerned is to increase competition between brands of **different** suppliers⁹. Clearly, manufacturers should generally be free to choose how their own brands relate to one another, and the Regulation therefore allows them to stipulate that their brands may not be sold together in the same showroom. If car manufacturer A produces brands A1 and A2, it may stipulate that these must be sold in separate showrooms. It may not, however, stipulate that either A1 or A2 may not be sold in the same showroom as brands of other suppliers.

As regards practical obligations that may be required of a multi-brand dealer, please see question 5.

7. Can a dealer in a selective distribution system be required to purchase 30% of its motor vehicles directly from the manufacturer, or from the national importer?

While a dealer in a selective distribution system may be obliged to ensure that 30%¹⁰ of its total purchases of motor vehicles are of a given manufacturer's brands, it must

⁸ For example, requirements for branded customer entrances will need to be waived. Requirements relating to the degree and positioning of signage on the outside of the showroom, or to brand-specific display areas may also need to be relaxed.

⁹ To be covered by the Regulation, an obligation to sell the brands of a particular manufacturer may not relate to more than 30% of all the vehicles purchased and sold by the dealer - see Art. 1(1)(b) and 5(1)(a) of Regulation 1400/2002. These provisions also apply to exclusive dealer agreements.

¹⁰ According to Article 1(1)(b) of Regulation 1400/2002, this percentage has to be based on the buyer's total purchases of contract goods, corresponding goods and their substitutes on the relevant market. If the dealer sells, for example, both light commercial vehicles and heavy trucks, the 30% threshold has to be calculated for each of these categories of vehicles separately, since they belong to different product markets.

be free to source (cross-supply) those vehicles from other authorised dealers or national importers. Any obligation on such a dealer to purchase 30% of its total purchases of motor vehicles directly from a given manufacturer or national importer would therefore not be covered by the Regulation¹¹.

If supplier A imposed an obligation on dealer X such that 30% of the vehicles that X purchased had to be of its brands, X would have to be free to buy these vehicles from other dealers, wholesalers or importers of supplier A's brands, and would also be free to buy up to 70% of its total purchases of vehicles from suppliers of other brands. If all other suppliers imposed the same 30% purchasing obligation, X would be free to take on makes from a maximum of three suppliers. X could therefore, for example sell makes A1 and A2¹² from supplier A, plus B1 from supplier B, and C1 from supplier C. It is also possible that small suppliers or new entrants would not impose the 30% obligation, and that as a result, X could take on makes from more than three suppliers.

See also section 4.5.1 of the Explanatory Brochure.

SALES TARGET/BONUS

8. If a supplier grants bonuses to a dealer in respect of sales of cars purchased directly from the supplier, must he also grant bonuses in respect of sales of vehicles of the same make purchased from other members of the authorised network (i.e. cross-supplied vehicles)?

Suppliers must ensure that non-payment of bonuses does not amount to an indirect restriction on cross-supplies of vehicles between authorised dealers. Bonuses available to a dealer for sales to end-users should therefore also be available in respect of sales to other dealers authorised to sell vehicles of the brand in question¹³. However, if dealer X has received a bonus in respect of a sale to dealer Y, no restriction on cross-supply will subsequently arise if dealer Y does not receive a (second) bonus in respect of a subsequent resale of the same vehicle to an end user.

9. Can a supplier terminate a dealer's contract if that dealer fails to meet an agreed target for sales in its local area?

Under Regulation 1400/2002, suppliers are free to agree sales targets with dealers. Such targets may be general, or may be set by reference to a local area.

¹¹ It would be a restriction of cross-supplies, which is a "hardcore" restriction of competition under Article 4(1)(c) of Regulation 1400/2002.

¹² The 30% purchase obligation applies to the products of each supplier. If a dealer sells makes A1 and A2 from supplier A, then the 30% sales obligation applies to the total purchases of vehicles from both makes.

¹³ In an exclusive distribution system, such bonuses must also be available in respect of sales to independent resellers.

The Regulation does not prevent a supplier from terminating the contract of a dealer who has failed to use his best endeavours to meet an agreed sales target. However, a supplier may not terminate a dealer's contract if the dealer's failure to meet a sales target is due to an inability to obtain sufficient vehicles to satisfy demand, including demand from customers outside his local area¹⁴.

Dealers must have the right to go to arbitration in the event of a dispute over the setting or attainment of sales targets, including local sales targets.

See also the answer to question 43 in the Explanatory Brochure.

SALES AGENTS

10. Can a supplier prevent a dealer from appointing sales agents¹⁵ to sell vehicles on the dealer's behalf?

Yes, a supplier may decide whether or not a dealer may appoint sales agents, and may set criteria regarding how such agents carry out their sales activities.

MIXING DISTRIBUTION SYSTEMS

11. Can a supplier use exclusive distribution and selective distribution in different areas of the same Member State?

Regulation 1400/2002 does not oblige a manufacturer to use the same distribution system for the whole of the territory of a Member State. In theory, a manufacturer or importer in Member State X could have an exclusive distribution system in region X1, and a selective system in region X2. However, such a supplier would not be able to limit flows of vehicles from one area to another, in particular since the Regulation does not allow suppliers to prohibit dealers with exclusive territories from selling to independent resellers (i.e. firms that are not members of the manufacturer's network).

Thus, in the example above, the manufacturer or importer could not prevent (exclusive) distributors in Region X1 from selling vehicles directly to consumers in region X2, or to independent resellers. These resellers would then of course be free to resell vehicles in Region X2, and indeed in all other areas of the EU. Moreover, (selective) distributors in Region X2 could not be prohibited from selling to

¹⁴ For example, if a dealer subject to a local sales target of 200 vehicles sells 180 vehicles in the local area, and 40 more to customers from elsewhere, but his supplier is subsequently unable to provide him with the full 240 vehicles needed to fulfil both his local sales target and his "out-of-area" sales, that supplier may not then terminate the dealer's contract for failure to meet the local sales target, since this would amount to an indirect restriction on sales, which is blacklisted under Article 4(1)(d) and (e) of the Regulation.

¹⁵ A sales agent is to be contrasted with a purchasing agent or "intermediary". Whereas an intermediary purchases vehicles on behalf of individual consumers, a sales agent acts on behalf of one or more dealers.

independent resellers in Region X1¹⁶ or indeed to any consumers in Region X1 that approached them¹⁷.

Questions concerning servicing and repair

HONOURING THE WARRANTY

Please see questions 1 and 2 above.

QUALITY STANDARDS

12. What standards can a supplier ask authorised repairers to fulfil?

Most suppliers will establish qualitative selective distribution systems for repair and maintenance, since the market share of their network as regards repairing and maintaining vehicles of their brands will be higher than 30%. In such a system, a supplier is free to define the quality criteria that candidates have to fulfil in order to become members of its authorised repair network.

While it is obvious that many quality criteria will **indirectly** limit the number of candidates capable of meeting them, true quality criteria must not **directly** limit the number of authorised repairers, and must not be in excess of what is required by the nature of the repair and maintenance services that are the object of the contract between the supplier and the repairer.

Suppliers may legitimately require authorised repairers to be in a position to perform repair and maintenance of a defined quality and within defined time limits. However, if a supplier were to lay down requirements that did not allow a dealer a degree of flexibility as to how a defined result was to be achieved, this would amount to a quantitative selection criterion not covered by the block exemption, in particular if it unnecessarily increased the cost of providing a service.

The following examples, drawn from actual distribution agreements, illustrate this principle:

F A manufacturer may legitimately specify that authorised repairers should be capable of carrying out a wide range of repair and maintenance services. To achieve this, a repairer may need to have access to specialised tools and equipment that is needed only occasionally. While the obligation to have access to such rarely-used equipment is clearly legitimate, a requirement to actually own such equipment and have it on the premises would not be a true quality criterion, since this would not be required by the nature of the repair and maintenance

¹⁶ See Recital 13 of Regulation 1400/2002.

¹⁷ i.e. engaging in “passive sales”

services in question. Instead, in these circumstances the supplier should, for instance, allow authorised repairers to rent such tools.

- F A requirement to purchase or use brand-specific diagnostic equipment where equivalent generic equipment was available would also not be a true qualitative criterion and would therefore not be covered by the Regulation. Moreover, such a requirement would be likely to indirectly restrict multi-branding in the field of repair and maintenance services, since a repairer would then have to have specific diagnostic equipment for each brand, which would reduce the economies of scale accruing to a multi-brand repair shop.
- F A requirement for each authorised repairer to have a car wash would also not be a true quality criterion. While a manufacturer may have a legitimate interest in specifying that a repairer has access to a equipment to wash the vehicles of those customers who require this service, it should be left to the authorised repairer to decide how to achieve this result, and he can, for instance, do so by taking the vehicle to a nearby petrol station with a car wash.
- F Clearly, a supplier has a legitimate interest in ensuring that any electronic equipment that a repairer uses to communicate with it does the job efficiently and securely, and is compatible with the supplier's own IT systems. However, a requirement to use a narrowly specified technical solution for such communication would not be a true quality criterion if the dealer could achieve the same objectives by other cheaper or more flexible means. Where a repairer needs certain technical information in order to be able to link his IT system with that of the supplier, this should be made available.
- F A requirement to make temporary replacement vehicles available to customers whose own vehicles are being serviced or repaired would be a valid quality criterion. However, while an obligation to be able to offer such services is normally legitimate, a requirement to actually own replacement cars would not be a true qualitative criterion, since this would not be required by the nature of the repair and maintenance services in question. The supplier should, for instance, allow authorised repairers to satisfy their customers' mobility needs by giving them access to a hire car. The parties must be free to refer disputes on the assessment of such requirements to an independent expert or arbitrator¹⁸.

13. Can a supplier require candidate authorised repairers to meet criteria additional to those required of existing members of the repair network?

Generally speaking, no. Most suppliers will establish qualitative selective distribution systems for repair and maintenance, since the market share of their network as regards repairing and maintaining vehicles of their brands will be higher than 30%. Requiring candidates to meet extra criteria over and above those required of existing members of the distribution system would not be compatible with the nature of a qualitative system and would not be covered by the Regulation.

¹⁸ Article 3(6) of Regulation 1400/2002.

14. Does a supplier have to set identical criteria for all members of the authorised repair network?

Not necessarily. A supplier must set identical quality criteria and apply them in the same manner to all repairers that are in similar situations (the principle of non-discrimination). However, a supplier may for instance require repairers in prosperous urban areas to meet different standards to those in rural areas, or may require large workshops to respect different criteria to small ones.

15. Can a supplier refuse to grant authorisation to a repairer that only carries out bodywork repairs (a bodyshop) and does not carry out repairs of other types, such as mechanical work?

The answer depends upon whether a supplier has a **quantitative** or purely **qualitative** selective system for appointing authorised repairers. (A supplier using a quantitative system may only benefit from the Regulation if its market share as regards the repair and maintenance of the brand in question is below 30%.)

A requirement relating to the range of services that a firm must offer is generally considered to be a valid **quality** criterion and is therefore allowed within a purely **qualitative** selection system. Therefore, generally speaking, a supplier with a qualitative selective system may refuse to authorise “bodyshop only” outlets. However, one of the characteristics of a purely qualitative system is that suppliers may not discriminate between members of that system. Therefore, if a supplier already has other “bodyshop only” repairers within its authorised network, it may not refuse to appoint further “bodyshop only” repairers unless these do not meet the quality criteria for such outlets.

On the other hand, a supplier operating a **quantitative** system may always refuse to appoint a given “bodyshop only” repairer, even if it has already appointed other “bodyshop only” outlets and if the new applicant meets the quality criteria.

The same principles apply to candidate authorised repairers that wish to provide other limited ranges of services within the network, such as “fast fit” outlets that concentrate on replacing exhausts, tyres, brakes, and shock absorbers.

16. Can a supplier refuse to authorise spare parts distributors that do not also repair vehicles?

Usually, no. In the vast majority of cases suppliers will be above the market share threshold of 30% for certain categories of spare parts, and in order to be covered by the Regulation will therefore use qualitative selection to select authorised spare parts outlets. The question therefore arises as to whether an obligation to repair vehicles within the manufacturer's network is a valid quality requirement for a spare parts distributor. In order to determine this, one needs to examine whether or not this requirement (to also be authorised to repair vehicles) is objective and required by the nature of the product (spare parts). There is nothing in the nature of a spare part that requires it to be sold exclusively by firms that are authorised to repair vehicles of the make in question, and such an obligation therefore amounts to a requirement that may

not be exempted under the Regulation in the context of a qualitative selective distribution system.

MULTI-BRAND REPAIR SHOPS

17. What practical requirements can a supplier impose on a repairer that wants to gain authorised repairer status from competing manufacturers?

The principles set out in the reply to question 5 as regards multi-brand dealers also apply to multi-brand repair shops.

General Questions

18. Is a supplier obliged to use separate contracts for vehicle sales and for repair and maintenance?

No. The supplier may choose to use separate contracts for each activity, but may also choose to use a single contract for dealers who are also authorised repairers.

However, whether there is one contract or several, a firm carrying out both sales and repair and maintenance must be able to put an end¹⁹ to the contractual obligations relating to one of those activities without having to enter into a new agreement with his supplier in respect of the other activity. For example, a dealer who has an agreement covering both sales and repair, and who wishes to withdraw from new car retailing while maintaining his authorised repairership should be able to do so on the basis of his existing agreement.

19. To what extent may a supplier have access to the business data of a dealer or repairer that is also authorised to sell or repair brands of competing manufacturers?

A supplier may have a legitimate interest in ensuring that a dealership or authorised repair business is financially sound, and may therefore request sight of a dealer's or authorised repairer's general accounts. However, a supplier may not require access to specific data relating to sales or servicing of vehicles from other makes, since other suppliers might object to their vehicles being sold or serviced by a dealer or repairer that was subject to such scrutiny. Moreover, the exchange of commercially sensitive information relating to sales or repair might well pose other competition problems.

In the event that a supplier feels it necessary to examine the records of a multi-brand dealer or authorised repairer in detail, it should pay for such an examination to be carried out by an independent party, such as an accountant, that will respect the confidential nature of sensitive information.

¹⁹ Although he will have to observe any contractual notice requirement.

- 20. If a dealer or repairer of a given brand wishes to sell his dealership or repairership to another dealer or repairer of the same brand, does he have to first offer it to the supplier of that brand? Does he have to inform the supplier well in advance of the proposed sale?**

The Regulation gives each dealer who wishes to sell his dealership the right to sell it to another dealer of his choosing within the manufacturer's network. The same goes for repairers, who must be free to sell to any other repairer they choose within the same brand network. The Regulation therefore does not cover any obligation obliging a dealer or repairer to offer his dealership or repairership to the supplier before offering it to other dealers or repairers (right of first refusal).

The dealer or repairer may be required to inform the supplier of his intention to sell the dealership or repairership, but this must not delay the transfer. An advance notice requirement of four weeks before the transfer becomes effective would therefore be acceptable.