



Brussels, 17.4.2023
SWD(2023) 83 final

COMMISSION STAFF WORKING DOCUMENT
STAKEHOLDER CONSULTATION - SYNOPSIS REPORT

[Optional element]

Accompanying the documents

Commission Regulation amending Regulation (EU) N° 461/2010 as regards its period of application

COMMUNICATION FROM THE COMMISSION
Amendments to the Commission Notice - Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles

{C(2023) 2335 final} - {C(2023) 2336 final}

SYNOPSIS REPORT ON THE STAKEHOLDER CONSULTATION AND THE CALL FOR EVIDENCE

IN THE CONTEXT OF THE POLICY PHASE OF THE REVIEW OF THE MOTOR VEHICLE BLOCK EXEMPTION REGIME

In view of the expiry of the Motor Vehicle Block Exemption Regulation (EU) No 461/2010¹ ("MVBBER") on 31 May 2023 and following an evaluation² of the functioning of the MVBBER Regime,³ the European Commission ("the Commission") revised the existing rules and prepared a draft Regulation prolonging the validity of the MVBBER for five additional years (until 31 May 2028) and a draft Communication introducing targeted updates to the Supplementary Guidelines⁴ ("SGL").

Between 6 July and 30 September 2022, the proposed extension and draft amendments were subject to a stakeholder consultation and a call for evidence to gather stakeholder comments on the proposed scope and content of the draft texts. This Synopsis Report (the "Report") provides an overview of the participants, the contributions received and how the feedback was taken into account.

Section 1 of this document should be regarded solely as an overall summary of the contributions made by stakeholders through the consultation processes. It cannot be regarded as stating an official position of the Commission or its services. Thus, the summary of the contributions made by stakeholders contained in Section 1 does not bind the Commission in any way. Responses to the consultation activities also cannot be considered as a representative sample of the views of the EU population.

1. Stakeholder consultation and call for evidence

The stakeholder consultation and call for evidence on the draft amendments to the MVBBER and SGL took place **between 6 July 2022 and 30 September 2022**. While the call for

¹ Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector. OJ L 129, 28.5.2010, p. 52–57.

² Evaluation Report (COM(2021)264) and Staff Working Document (SWD(2021)112) on the findings of the evaluation are available [here](#).

³ The MVBBER Regime comprise the MVBBER, the Supplementary Guidelines ("SGL"), along with the application of the General Block Exemption Regulation (EU) No 330/2010 ("VBER") and the Guidelines on Vertical Restraints ("VGL") to the motor vehicle sector. Any reference to the MVBBER Regime in this document should be understood as comprising the four set of rules.

⁴ Commission notice — Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles. OJ C 138, 28.5.2010, p. 16–27.

evidence was published on the EU portal “Have your Say”,⁵ the stakeholder consultation was made available on DG Competition’s website.⁶

Both activities were open to all interested parties, including those with an interest in the automotive sector. The latter included (i) undertakings with business operations in the EU motor vehicle sector, notably vehicle manufacturers (“VMs”) and dealers, spare parts manufacturers and distributors (authorised and independent), and repairers (authorised and independent), (ii) associations thereof, (iii) consumer organisations, as well as (iv) academics with a focus on EU competition law and notably on the motor vehicle sector.

1.1. Range of participating stakeholders

In total, **46 contributions** were received, some of which included joint feedback from several stakeholders. Most contributions were submitted by business associations (32 replies) and companies (7 replies). The remaining contributions came from two insurance federations/associations; two public entities; one academic/research institution; one consumer association and one EU citizen.

The 32 respondents which contributed on behalf of a business association were associations representing parts/components manufacturers and/or distributors; vehicle repairers; vehicle leasing companies; VMs and/or dealers; and vehicle data publishers. The majority of the associations representing aftermarket operators, such as parts manufacturers, vehicle dealers and vehicle repairers, responded on behalf of independent rather than authorised operators.⁷ Of the seven respondents that contributed on behalf of companies/business organizations, five were active in the aftermarket. Of the remaining two respondents, one operated as a VM and another as a law firm on their own account. The other groups represented public entities, insurance federations/associations and consumers/other individuals.

In terms of geographical distribution, submissions were received from **14 different countries**. The countries in which more contributors are based were Belgium (9 replies),⁸ France (9 replies), Germany (8 replies), Spain (4 replies), UK (3 replies) and Austria (3 replies).

1.2. Main points of the feedback received

Respondents generally agreed with the proposed five-year extension of the MVBER and welcomed the inclusion of vehicle-generated data into the SGL. However, some stakeholders also called for further changes, particularly regarding the SGL, to respond to current challenges they had identified in the automotive repair and maintenance and parts supply markets. These comments are outlined below.

⁵ Details accessible [here](#).

⁶ Details accessible [here](#).

⁷ This majority includes either associations representing only independent operators or both independent and authorized operators. The remaining submissions, one of which coming from a law firm and another from a VM, did not clearly argue in favour of the independent aftermarket.

⁸ Most of the respondents for which "Belgium" was identified as the country of origin were European associations based in Brussels.

1.3.1. Misuse of cybersecurity measures

Several stakeholders from the aftermarket segment warned against the **misuse of cybersecurity** by VMs to restrict the access of independent aftermarket operators to data essential for vehicle repair and maintenance.

1.3.2. Clarifications regarding the term “technical information” and the newly introduced terms of “vehicle generated data” and “essential inputs”

Stakeholders from the independent aftermarket submitted that **further examples** should be given of what could constitute technical information (paragraph 66 of the draft amended SGL), e.g., activation codes for spare parts, advanced driver assistance systems, and battery management systems for electric vehicles.

In addition, some stakeholders, namely representatives of automotive aftermarket distributors and an automotive data publishers’ association, requested additional **clarity regarding the notion of independent operators**. For example, these stakeholders proposed adding “publishers of vehicle-generated data” and “distributors of repair equipment and tools” to the list of independent operators mentioned in paragraph 62 of the draft amended SGL.

Also, respondents belonging to different types of stakeholder groups felt that the newly introduced term of **vehicle-generated data** was **not clear enough**.⁹ They suggested to include in the SGL a list of examples of what would constitute vehicle-generated data.

Lastly, several of the participating business associations, representing both independent and authorized operators, as well as a parts supplier, expressed concerns with regard to the newly introduced reference to technical information, tools and training, and vehicle-generated data as potential **essential inputs** for repair and maintenance.¹⁰ They would have preferred alternative terms, like “relevant”, “necessary” or “needed”.

1.3.3. The authorised repair network as a benchmark for sharing essential inputs

Representatives of independent market operators criticised the fact that paragraph 62a (b) of the draft amended SGL used the **data provided by VMs to authorised repairers as the benchmark** for giving access to data to independent operators. Respondents emphasised the different and specific access needs of companies at different levels of the repair and spare parts aftermarket, which would include the need for access to data in specific formats, and advocated for the unrestricted supply of all data to which the VMs had access, even beyond what is shared with the authorised repair networks.

1.3.4. Other issues not strictly related to technical information/ vehicle-generated data

Besides comments on issues related to vehicle-generated data, some stakeholders also felt that **restrictions on spare parts** continued to exist, particularly due to increasing captivity and tooling restrictions. In that context, it was suggested to introduce into the MVBER regime specifications for appropriate licensing fees. Some stakeholders also pointed to issues

⁹ Used in paragraphs 62 and 67a of the draft amended SGL.

¹⁰ Used in paragraphs 60, 62, 62a, 62b, 63, 67a, and 68 of the draft amended SGL

related to alleged quantitative limitations to **access the VMs' authorised repair networks**; and some claimed that VMs continued to **misuse warranties and misinform consumers** that warranties were conditional on repair at certain workshops. Lastly, a few stakeholders also advocated for further guidance to be included on **agency agreements** and **exchange of information in dual distribution** in the automotive sector.

2. How feedback was taken into account

2.1. Tools and methodology

A quantitative and qualitative analysis of the replies to the stakeholder consultation and the call for evidence was conducted. Based on this analysis, the drafts were revised and several suggestions were included in the final revised rules (2.2.). Other suggestions were not carried forward into the revision due to the reasons explained below (2.3.).

2.2. Feedback incorporated in the final revised rules

As stakeholders generally welcomed the prolongation of the MVBBER for five years, the amendments to the MVBBER were retained. The point where most stakeholders' views converged regarding the necessity of further amendments was the draft amended SGL. In this context, the final revised SGL include additional changes to address the issues most frequently raised by stakeholders.

In particular, the final revised SGL contain a new paragraph dealing with the issue of **security concerns** being unduly used to withhold essential inputs that are necessary for repair and maintenance. The new paragraph 62b of the final revised SGL provides for the need to consider the proportionality principle when such inputs are withheld for security reasons.

Also, paragraph 66 of the final revised SGL provides **additional examples of what may qualify as technical information** in a modern context, namely: activation codes that are necessary to install spare parts, as well as information on how to work on advanced driver assistance systems and battery management systems for electric vehicles.

Moreover, paragraph 62 of the final revised SGL clarifies that the **concept of "independent operators"** includes "publishers of vehicle-generated data" as well as "distributors of repair equipment and tools".

Lastly, paragraph 68a was added to the final revised SGL to clarify that where **dominant suppliers withhold essential inputs from independent operators**, even if such inputs are not made available to the relevant authorised repair networks, **such conduct may be caught by Article 102 TFEU**. This amendment aims to make clear that the conduct concerned by the stakeholder feedback reported in Section 1.3.3 may under certain circumstances fall under Article 102 TFEU.

2.3. Other feedback

A careful analysis of the remaining feedback received revealed that it was not appropriate to address such comments in the revised rules for the following reasons:

First, some comments concerned issues that **exceed what can be achieved by a block exemption regulation and its accompanying guidelines** (e.g., the request for the provision

of a list of examples of vehicle-generated data and for a regulation of the price for the provision of such data, or the comments on misinformation to consumers on the scope of warranties). The MVBER and the SGL deal with the assessment of vertical agreements in the automotive sector under Article 101 TFEU and can therefore only provide guidance on this matter. These instruments cannot, however, impose regulatory obligations on VMs or any other operators, or deal with consumer protection issues.

Second, other suggestions concerned issues that are **not necessarily specific to the automotive sector** and are already addressed by cross-sectoral competition instruments¹¹ (i.e., agency and dual distribution related comments).

Third, as to comments that advocated for the replacement of the term “essential” in “essential inputs” by “relevant”, “necessary” or “needed”, it should be noted **that the term “essential” ensures parallelism and thus legal certainty** with both the case law concerning unilateral refusals under Article 102 TFEU¹² as well as with other instruments under 101 TFEU (e.g., the Guidelines on technology transfer agreements¹³ and the Guidelines on horizontal co-operation agreements¹⁴).

Finally, a number of **comments were not supported by evidence** (e.g., issues with access to authorised networks, the misuse of warranties, withholding of captive parts by VMs, and requirements to use VM-branded spare parts to replace vehicle parts).

¹¹ OJ L 134, 11.5.2022, p. 4–1 (VBER) and OJ C 248, 30.6.2022, p. 1–85 (VGL).

¹² See Judgment of 26 November 1998, *Oscar Bronner GmbH & Co. KG v Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG, Mediaprint Zeitungsvertriebsgesellschaft mbH & Co. KG and Mediaprint Anzeigengesellschaft mbH & Co. KG*, Case C-7/97, ECLI:EU:C:1998:569 and Judgment of 17 September 2007, *Microsoft Corp. v Commission of the European Communities*, Case T-201/04, ECLI:EU:T:2007:289.

¹³ OJ C 89, 28.3.2014, p. 3-50.

¹⁴ OJ C 11, 14.1.2011, p.1-72.