

## **Factual summary of the contributions received in the context of the public consultation on the evaluation of the Motor Vehicles Block Exemption Regulation (EU) No 461/2010**

The European Commission (“the Commission”) is currently evaluating the functioning of the motor vehicle block exemption rules<sup>1</sup>, comprising the Motor Vehicle Block Exemption Regulation (EU) No 461/2010<sup>2</sup> (“MVBBER”), the application of the General Block Exemption Regulation (EU) No 330/2010 to the motor vehicle sector<sup>3</sup> (“VBER”), along with the Supplementary Guidelines<sup>4</sup> (“SGL”) and the Guidelines on vertical restraints<sup>5</sup> (“VGL”).

In this context, the Commission launched a public consultation on 12 October 2020. Although the consultation was initially planned to run for 12 weeks, the Commission decided to extend this period to 15 weeks to accommodate COVID-19-related difficulties. The consultation was finally closed on 25 January 2021. The aim of the consultation was to gather stakeholders’ views and evidence to assess whether and to what extent the objectives of the motor vehicle block exemption rules have been fulfilled, as well as to collect facts on the key competition issues arising in vertical relationships in the motor vehicles sector.

The questionnaire for the consultation was published in English, but participants could reply in any of the 24 official languages of the EU. The consultation was promoted through Twitter and the DG Competition website.

The Commission received 84 contributions to the public consultation, which were submitted through the online questionnaire tool. 17 participating stakeholders also submitted position papers, which largely echoed the issues raised in the contributions to the public consultation.

The statistics computed in this summary are based only on contributions to the public consultation submitted through the online questionnaire. The input has been analysed using a data analysis tool<sup>6</sup>,

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<sup>1</sup> Any reference to the motor vehicle block exemption rules in this document should be understood as comprising the four set of rules, namely the MVBBER, the VBER and their respective Guidelines.

<sup>2</sup> 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.

<sup>3</sup> Commission Regulation (EU) No 330/2010 of 20 April 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. OJ L 102, 23.4.2010, p. 1–7.

<sup>4</sup> 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.

<sup>5</sup> Guidelines on Vertical Restraints. OJ C 130, 19.5.2010, p. 1–46.

<sup>6</sup> The tool used is Doris Public Consultation Dashboard, an internal Commission tool for analyzing and visualizing replies to public consultations. It relies on open-source libraries using machine-learning techniques and allows for the automatic creation of charts for closed questions, the extraction of keywords and named entities from free-text answers as well as the filtering of replies, sentiment analysis and clustering.

and completed by manual analysis.

The contributions received cannot be regarded as the official position of the Commission and its services and, thus, do not bind the Commission. The summary of the contributions is preliminary and does not prejudice the findings of the Staff Working Document.

### 1. Profile of respondents

Among the 84 respondents to the consultation, there were 37 business associations; 30 company/business organizations; 2 consumer organizations<sup>7</sup>; 1 EU citizen; 1 non-governmental organization; 1 academic/research institution; 1 public authority; 1 trade union; and 10 other<sup>8</sup>. The large majority of the contributions were submitted in English<sup>9</sup>.

The distribution of replies across organization size is relatively homogenous with 30 micro (1 to 9 employees); 21 small (10 to 49 employees); 19 large (250 or more employees); 13 medium organizations (50 to 249 employees); and, 1 EU citizen. Table 1 below shows the geographic origin of respondents<sup>10</sup>.

Country	Count
Belgium	13
Netherlands	12
Germany	11
UK	10
France	8
Austria	7
Spain	5
Italy	4
Finland	3
Czech Republic	2
Denmark	2
Sweden	2
Switzerland	2
Ireland	1
Norway	1
Portugal	1

*Table 1 - Distribution of stakeholders associations across countries*

Respondents which contributed on behalf of a company/business organization or business association presented themselves as active at various levels of the motor vehicle supply chain. In particular, 27 stakeholders identified themselves as non-authorized parts dealers; 22 as non-authorized repairers;

<sup>7</sup> The 2 respondents which identified as “consumer organizations” are actually motorists associations.

<sup>8</sup> The 10 stakeholders, which identified as “other” include associations and companies.

<sup>9</sup> A few contributions were submitted in German (13), French (3), Finnish (2) and Spanish (1).

<sup>10</sup> It should be noted that most of the respondents that selected “Belgium” as country of origin are associations of European scope, which are based in Brussels.

15 as authorised parts dealers; 14 as authorised repairers; 14 as authorised dealers; 10 as parts manufacturers; 10 as non-authorised dealers; 9 as vehicle leasing / rental; 6 as vehicle importers; 5 as intermediaries purchasing vehicles on behalf of individual identified end consumers; 4 as vehicle manufacturers (“VMs”); 3 as agents selling vehicles on behalf of one or more VMs / importers; and 3 as agents selling vehicles on behalf of one or more dealers<sup>11</sup>. 1 stakeholder identified as a law firm acting on its own account. In addition, 25 respondents did not indicate main function / activity<sup>12</sup>.

As for the type of product concerned by the business of the respondents, 58 declared themselves to be active in the passenger cars segment; 53 in light commercial vehicles; 38 in heavy goods vehicles; 30 in buses and coaches; and, 9 in other<sup>13</sup>.

## **2. Contributions**

The questions of the public consultation were structured around the five evaluation criteria of the Better Regulation Guidelines<sup>14</sup>, namely, effectiveness, efficiency, relevance, coherence and EU added value. The below summary follows this structure and only represents the views of those that participated in the consultation. As the content of this summary is not the result of a large-scale survey, statistics regarding number of stakeholders supporting a particular view may not be representative of the actual views of all market operators.

### ***2.1. Effectiveness (Have the objectives been met?)<sup>15</sup>***

In order to evaluate whether the motor vehicle block exemption rules have met their objectives, stakeholders were asked to answer several sets of questions.

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<sup>11</sup> It should be noted that some of the respondents selected several main functions / activities.

<sup>12</sup> These include (i) data publishers; (ii) insurance companies / associations; (iii) car dealers and repairers associations; (iv) garage equipment associations; (v) public entities; (vi) an association of importers of spare parts, accessories and garage equipment; (vii) an academic institution; (viii) an oil recycling company; (ix) an automotive industry staff association; (x) an automotive industry consultancy; and, (xi) a competition lawyers association.

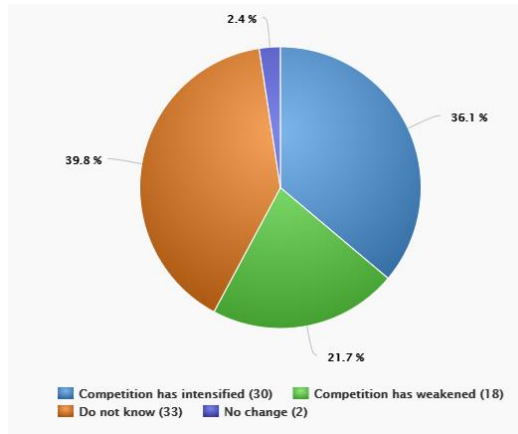
<sup>13</sup> Some of the respondents selected several segments and 26 respondents did not specify the product concerned by their business.

<sup>14</sup> The better regulation requirements are about designing and evaluating EU policies and laws transparently on the basis of evidence and the views of stakeholders and citizens. They are applicable to all policy areas and aim for targeted and proportionate regulation that does not go further than required to achieve a given objective, while bringing benefits at minimum cost.

<sup>15</sup> Respondents which did not provide any reply to any of the questions of the “Effectiveness” section are not taken into account in the graphs below.

### 2.1.1. Intensity of competition

The first question of this set enquired whether stakeholders believed that **competition in new motor vehicle distribution had intensified, weakened or stayed the same since 2010.**



*Figure 1 – Changes in intensity of competition in the new motor vehicles distribution sector*

The group of respondents claiming that competition has intensified<sup>16</sup> referred to issues such as: (i) the increasing number of brands of motor vehicles in the EU market; (ii) increasing direct sales by VMs; (iii) more diversity in terms of product variety (e.g., hybrid, plug-in hybrid, battery electric, hydrogen, etc.); (iv) more offer in some technologies (e.g., powertrain technology); (v) multiple sales channels; (vi) increase of vehicle use (e.g., leasing, sharing or renting); (vii) easier access to information on new vehicles, spare parts and service agreements; (viii) more leverage of fleet operators; (ix) the growth of repairer networks; (x) the impact of COVID-19 on demand and, thus, on competition; and, (xi) the better access to data thanks to publishers.

The group of respondents claiming that competition has weakened<sup>17</sup> pointed at: (i) consolidation of the market; (ii) large groups of dealers continuing to grow, while numbers of SME dealers continues to decrease; and, (iii) the lack of a level playing field, reducing real competition.

<sup>16</sup> Primarily, associations representing vehicle dealers, importers or manufacturers, but also companies (mainly parts manufacturers and dealers).

<sup>17</sup> Primarily, associations representing vehicle importers and part dealers, but also companies represented (mainly vehicle leasing/rental companies and repairers).

The second question of this set enquired whether stakeholders believed **competition in repair and maintenance services for motor vehicles had intensified, weakened or stayed the same since 2010.**

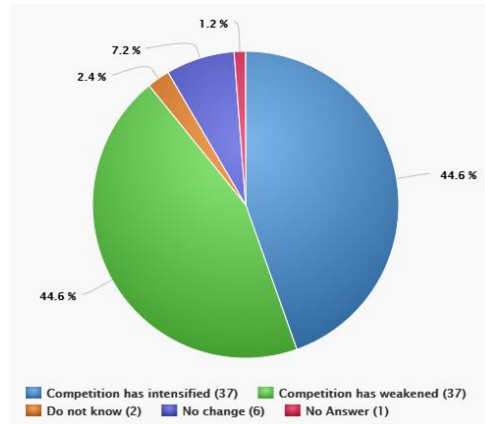


Figure 2 - Changes in intensity of competition in R&M

The group of respondents claiming that competition has intensified<sup>18</sup> referred to a number of factors to justify their views, such as (i) e-commerce; (ii) VBER/MVBER rules; (iii) growth in the business of independent aftermarket (“IAM”) operators; (iv) on-line reviews of repairers and more price transparency; (v) authorised repairers’ provision of aftersales services for several brands; (vi) an increase in competition between authorised and non-authorised repairers; and, (viii) pressure from leasing / rental companies, which want to build up their own service networks.

The group of respondents claiming that competition has weakened<sup>19</sup> pointed, among other things, at (i) issues faced in accessing technical information (restrictions/too cumbersome/too expensive); (ii) restrictive warranty terms; (iii) the decreasing number of repairers in some European regions; (iv) captive spare parts and requirements to activate spare parts after installation; (v) restrictions on access to tools, diagnosis, digital updates and software; and, (vi) technological developments in new vehicles making it harder for small independent repairers to provide their services effectively and affordably.

<sup>18</sup> Primarily, associations representing vehicle dealers, VMs or part manufacturers, but also companies (mainly vehicle and part dealers).

<sup>19</sup> Primarily, associations representing vehicle and part dealers, importers and agents, but also companies (mainly repairers and dealers).

The third question of this set enquired whether stakeholders believed **competition in the distribution of spare parts for motor vehicles had intensified, weakened or stayed the same** since 2010.

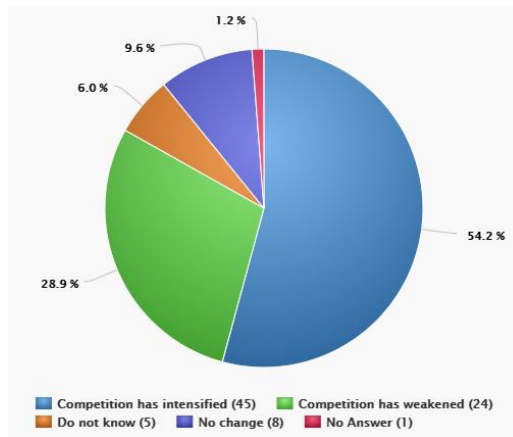


Figure 3 - Changes in intensity of competition in spare parts distribution

The group of respondents claiming that competition had intensified<sup>20</sup> noted, for example, (i) the positive impact of MVBBER; (ii) that the growth of e-commerce options boosts price competition; (iii) the increasing demand for remanufactured/recycled parts; (iv) that big new players had entered the EU parts distribution market (e.g., LKQ); and, (v) that although for many spare parts competition had increased, competition issues remained with regard to high added value spare parts (e.g., captive parts), parts where logos are displayed, parts requiring activation after installation, and vehicle glass (especially for new vehicles).

The group of respondents claiming that competition had weakened<sup>21</sup> pointed, among other things, at (i) barriers for data publishers to access information on spare parts; (ii) VMs hindering the capacity of their networks to buy spare parts from independent suppliers; (iii) a significant increase in prices of spare parts in some Member States (e.g., France); and, (iv) fewer operators in the spare parts distribution market as a result of mergers.

<sup>20</sup> Primarily, associations representing vehicle and part dealers or VMs, but also companies (mainly part dealers).

<sup>21</sup> Primarily, associations representing vehicle importers and part manufacturers, but also companies (mainly repairers).

### 2.1.2. Scope of the exemption

The first question of this set asked respondents whether they considered the **MVBER threshold to still be appropriate today**.

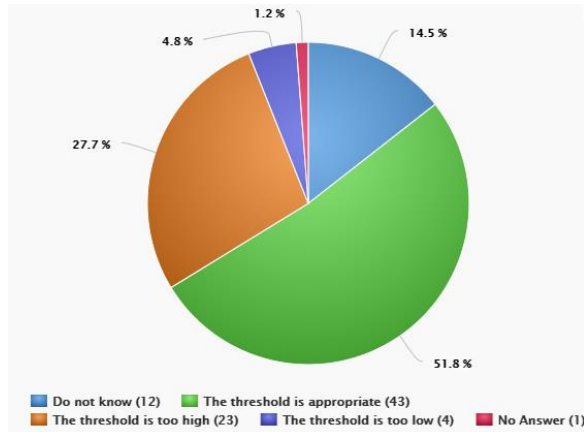


Figure 4 – Appropriateness of MVBER's threshold

Some respondents considering the threshold to be appropriate expressed the view that there is no reason to depart from the 30% market threshold for the market of new cars, whereas for the aftermarket the current approach of calculating market share for each brand separately means that, in practice, the threshold has little effect, since few agreements fall below it. Some respondents also pointed out that the threshold could be reconsidered for VMs or importers engaging in dual distribution. Some respondents advanced the view that the MBVER and/or SGL should stipulate that the large majority of single-branding obligations could not benefit from the block exemption.

Respondents considering the threshold to be too high<sup>22</sup> argued, for example, that the threshold should be lowered to 20%, due to (i) the increase in direct sales by VMs; (ii) the fact that very few players actually reach 30% market shares (e.g., important groups with significant market power hold market shares very close to 30%); or (iii) the fact that lowering the threshold could improve access to the original equipment manufacturers ("OEMs") networks for sales and aftersales services. Other respondents believed that the current threshold had had no effect on anti-competitive behaviour and that they would therefore suggest to lower it.

Respondents considering the threshold to be too low<sup>23</sup> explained, for example, that the 30% threshold seemed too low if (i) the market for repair and maintenance (insofar as it is separate from the market for the sale of new motor vehicles) were considered to be brand-specific; and (ii) the market shares of authorised repairers (even if legally they are separate companies) were attributed to

<sup>22</sup> Primarily, associations representing parts dealers and manufacturers, but also companies (mainly part dealers and repairers).

<sup>23</sup> Associations representing VMs, dealers and importers, a vehicle importer and a company active in the mineral-oil market.

VMs or if these were used as a proxy for the position of VMs on the upstream market, as this would entail that VMs' agreements regarding repair, maintenance and spare parts would not benefit from the exemption.

The second question of this set asked respondents to identify **any other elements**, besides the current threshold criterion, **on which the exemption should be made conditional**.

With the exception of VMs' associations, which argued that adding more conditions would create legal uncertainty, a majority of respondents identified conditions that could be added for agreements to benefit from the exemption. Many parts dealers, parts manufacturers and repairers referred to the need to make access to technical information as a condition to benefit from the exemption or, as an alternative, to recognize the failure to provide such access as a competition law violation. Another point raised by these stakeholders was that the misuse of warranties should be deemed as a violation of competition law or, at least, result in the loss of the benefit of the exemption. A few parts manufacturers and parts dealers argued that absence of restrictions on the freedom of choice by dealers and end users should be a condition for the exemption to apply. Some dealers and repairers also asked for direct sales by VMs to be capped at 20% of the overall sales volumes of each VM.

An association of the vehicle leasing / rental sector argued that the "end user" status of leasing companies should be mentioned explicitly in the VBER and MVBBER, as currently it is only found in the SGL. The exemption should be made conditional on (i) OEMs not discriminating between end users; (ii) OEMs not applying registration and use requirements; (iii) OEMs not requiring retention periods for vehicles; and, (iv) purchasers of vehicles not being obliged by OEMs to provide the name of the end customer. An oil/lubricants company mentioned that the analysis (of the market share threshold) should take account of VMs' market shares for both car sales and servicing for a better understanding of the impact on the market. Finally, a dealer/repairer argued that the exemption for the sale of new cars should be conditional on the admittance to the authorised network of all repairers that meet the VM's selection criteria.



The third question of this set asked respondents whether they had encountered any **types of vertical restriction in the motor vehicle sector that the VBER / MVBBER do not list as *hardcore*** but which, in the view of the respondent, should nonetheless be considered as such.

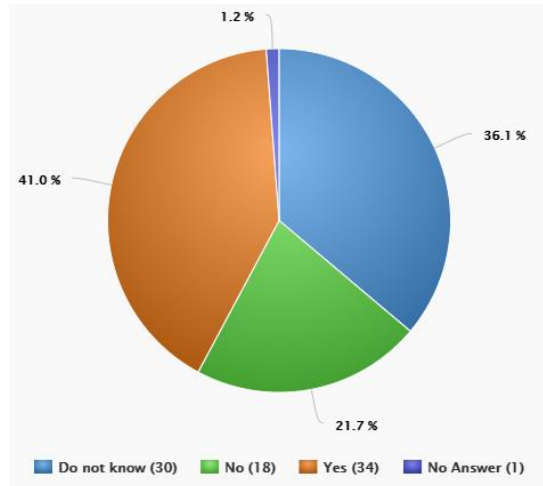


Figure 5 – Restrictions not listed as *hardcore* but that should be considered as such

The respondents which replied affirmatively to this question<sup>24</sup> identified the following practices as vertical restrictions that should be considered as *hardcore*: (i) direct or indirect quantitative criteria on the access to authorised networks (including refusal of access when quality criteria are met); (ii) restrictions on access to technical information and in-vehicle data for aftermarket operators (including data publishers); (iii) bundling sales and aftersales markets, for example, by offering inclusive maintenance plans by default, which allegedly tie the sale of new cars to the use of specific aftermarket providers, or by including both sales and aftersales functions within the same contracts, which is then terminated; (iv) refusing to license certain rights necessary to allow suppliers to offer spare parts to the independent channel; (v) restrictions on the sale of brands from different suppliers; (vi) including terms in warranties that require the use of VMs’ brands of spare parts in respect of replacements that are not covered by the terms of the warranty; and (vii) restrictions that were included in Article 4.2 and Article 4.1.(k) of Regulation 1400/2002.

The fourth question of this set asked respondents to indicate whether they had experienced any **types of vertical restriction in the motor vehicle sector that the VBER did not list as excluded** but which, in their experience, should nonetheless be considered as such.

The majority of respondents replied negatively to this question (46)<sup>25</sup>. The minority of stakeholders (14)<sup>26</sup> which replied affirmatively to this question identified some practices that should be considered

<sup>24</sup> Although the profile of respondents replying in this sense is very diverse, none of the VMs associations participating in the consultation replied affirmatively to this question.

<sup>25</sup> 20 respondents declared not to know and 3 did not provide an answer.

<sup>26</sup> This group of respondents included (i) some vehicle dealers and their associations; (ii) some parts manufactures/dealers and their associations; (iii) some repairers and their associations; (iv) a vehicle leasing

as excluded restrictions. For example, a couple of respondents mentioned that if the following restrictions are not added as *hardcore*, they should at least be considered as excluded: (i) OEMs discriminating between end-users; (ii) OEMs making sales conditional on registration and use requirements; (iii) OEMs requiring retention periods for vehicles; (iv) purchasers of vehicles being obliged by OEMs to provide end customer names; and, (v) a lack of fair access to in-vehicle data for leasing / rental companies and other stakeholders in the motor vehicle aftermarket.

Another respondent stated that, to improve legal certainty, clauses that impose the use of original parts or authorised-only repair/maintenance services beyond the legal guarantee period for brands with aftermarket shares above a certain threshold should be included in the MVBER or VBER as an excluded restriction. Impediments to accessing vehicle software were similarly suggested as a potential future excluded restriction. Finally, some respondents said that the specific conditions included in the previous MVBER should be reintroduced and that direct sales by VMs should be capped.

The fifth question of this set asked respondents to identify any **types of vertical restriction in the motor vehicle sector that the VBER / MVBER listed as *hardcore* but which, in their experience, should not be considered as such.**

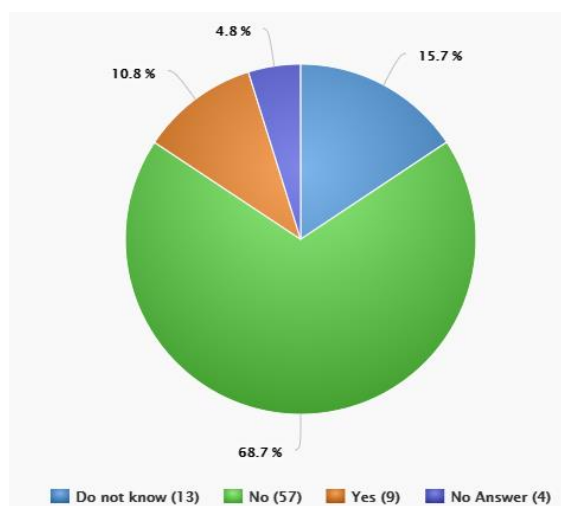


Figure 6 – Current *hardcore* restrictions that should not be considered as such

The majority (6) of respondents indicating that some of the current *hardcore* restrictions should no longer be classified as such<sup>27</sup> referred to resale price maintenance (“RPM”) (Article 4(a) VBER). Some of these pointed out that although RPM is currently permitted when new products are launched, companies applying RPM in this manner run the risk of losing the exemption for their entire agreement if the Commission finds that on the facts, the RPM in question is caught by the *hardcore* provision. This

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association; (v) an association of competition law attorneys; (vi) an association of companies active in equipment for vehicles and (vii) a car data consultancy.

<sup>27</sup> Primarily VMs associations, but also an association of competition lawyers, a car data consultancy and a parts manufacturer.

allegedly creates a disincentive for VMs to use RPM in these cases even though it can create efficiencies. Since the same should be true in other sectors, these respondents considered that the matter would therefore best be addressed in the review of the VBER.

Some of these respondents (4) also referred to the restriction on parts/tool/equipment suppliers' ability to sell to authorised/IRs/distributors or end users (Article 5(b) MVBER). However, none of these elaborated on the reasons as to why this excluded restriction should no longer be considered as such. A few respondents (2) referred to: (i) territorial/customer restrictions (Article 4(b) VBER); (ii) the restriction of sales to end customers by members of a selective distribution system (VBER Article 4(c)); (iii) the restriction of cross supplies within a selective distribution system (Article 4(d) VBER); (iv) the restriction of component suppliers' ability to sell components as spare parts to end users or repairers (Article 4(e) VBER); (v) the restriction of sales of spare parts by members of a selective distribution system to IRs (MVBER Article 5(a)); and, (vi) the restriction of component/part suppliers' ability to place their trademark/logo on the components/parts supplied (Article 5(c) MVBER).

Although in most cases no explanations were given as to why these restrictions should not be excluded from the block exemptions, one stakeholder did elaborate on the territorial/customer restrictions. In particular, this respondent noted that, in its view, in the context of selective distribution, there is a lack of clarity as to whether setting sales objectives and penetration goals in respect of an assigned territory could amount to a territorial restriction. This respondent pointed out that such territorial obligations are accepted in franchising agreements. This raises the question of whether franchising agreements may be used in the distribution of new cars.

The last question of this set asked respondents to identify **any types of vertical restriction in the motor vehicle sector that the VBER lists as excluded but which, in the respondents' view, should not be considered as such.**

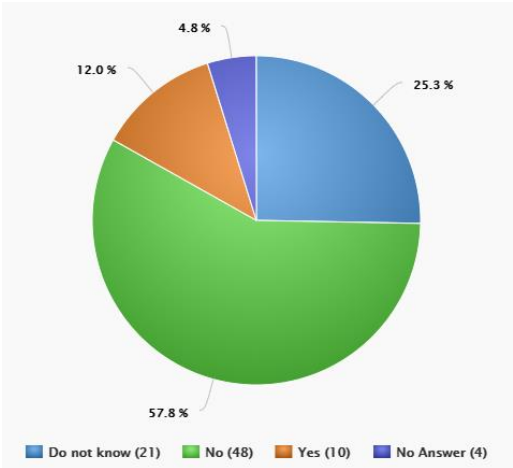


Figure 7 - Current excluded restrictions that should not be considered as such

With regard to (i) the non-compete/single-branding obligation (Articles 5(1)(a) and 5(2) VBER) and (ii)

the restriction of sales of particular competing suppliers by members of a selective distribution system (VBER Article 5(1)(c)), certain of the stakeholders declaring that some of the current excluded restrictions should no longer be classified as such<sup>28</sup> mentioned the desirability of obliging manufacturers to permit their dealers to sell other brands as, in their view, this would increase consumer choice. Some other respondents referred to the post-term non-compete obligation (Articles 5(1)(b) and 5(3) VBER) as a practice that should no longer be considered as “excluded restriction”, however, no specific explanations were provided to support this position.

### 2.2.3 Prevalence of particular restrictions

The first question of this set aimed at verifying **whether the motor vehicle block exemption rules achieved the following specific objectives** to the sector.

On ensuring access to vehicle retail and repair markets for VMs wishing to enter new markets or expand their market presence, out of the respondents that provided their views on this objective<sup>29</sup>, a majority considered that this objective had been achieved (14) or partially achieved (9). Only a few respondents (3) declared that, in their view, this objective had not been achieved. None of the respondents replying that this objective had either not been achieved or that it had only partially been achieved provided specific explanations for their positions.

On protecting competition between dealers of the same brand, out of the respondents that provided their views on this objective<sup>30</sup>, a majority considered that the objective had been achieved (11) or partially achieved (15). Some respondents (15) declared that, in their view, this objective had not been achieved. Some respondents considering that this objective had either not been achieved or had only partially been achieved observed that intra-brand competition had decreased due to, among other things, (i) the removal of the sector-specific block exemption from agreements for new car sales which, in the view of certain respondents, has increased the dependence of distributors on VMs; (ii) growing concentration and mergers between OEMs; and, (iii) the increasing number of dealerships that are owned by VMs. In addition, another argument raised was that with the increasing amount of vehicle data generated and the wireless technologies included in vehicles, OEMs tend to create an advantage for their brand networks over the IAM.

On preventing restrictions on cross-border trade in motor vehicles, out of the respondents that provided their views on this objective<sup>31</sup>, most declared that it had been achieved (23) or partially achieved (5). Some (9) expressed that, in their view, this objective had not been achieved. Some of the

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<sup>28</sup> Primarily, associations of vehicle dealers, parts dealers and repairers.

<sup>29</sup> 43 respondents declared that this objective was not relevant to them, 11 declared not to know and 3 did not provide an answer.

<sup>30</sup> 35 respondents declared that this objective was not relevant to them, 5 declared not to know and 2 did not provide an answer.

<sup>31</sup> 38 respondents declared that the objective was not relevant to them, 5 declared not to know and 3 did not provide an answer.

respondents considering that this objective had either not been achieved or had only partially been achieved explained that, in their view, manufacturers had effectively segmented the EU Single Market into national markets, thereby obstructing any real EU-wide competition; and that intra-brand competition between dealers only exists at the national level.

On enabling independent repairers to compete effectively with authorised repairers, out of the respondents that provided their views on this objective<sup>32</sup>, a majority opined that either this objective had been partially achieved (46) or fully achieved (11). Some declared that this objective had not been achieved (19). Some of the respondents considering that this objective had either not been achieved or had only partially been achieved referred to (i) restrictions on access to OEM-branded (captive) parts (e.g., issues to source them efficiently and in a cost effective manner through independent distributors); (ii) limitations on independent publishers' access to full/up-to-date technical information; (iii) OEMs preventing access to aftermarket diagnostics technologies (this allegedly leads to independent repairers being mainly focused on basic repairs/common maintenance, while more sophisticated interventions are conducted by authorised repairers); (iv) restrictions on access to in-vehicle data and security-related functions; (v) misuse of warranties by VMs to push consumers towards their network of authorised repairers.

On protecting competition between authorised repairers of the same brand, out of the respondents that provided their views on this objective<sup>33</sup>, the majority said that it had been fully achieved (14) or partially achieved (30). Some (17) believed it had not been achieved. Some of the respondents considering that this objective had either not been achieved or had only partially been achieved referred to (i) refusals to allow access to official networks or termination of contracts that provide for both vehicle sales and aftersales functions, thereby reducing intra-brand competition; (ii) application of disadvantages (bonus schemes, audits) if authorised repairers do not use official spare parts; (iii) intra-brand competition between authorised repairers is limited to national level.

On ensuring spare parts suppliers' access to the aftermarket, out of the respondents that provided their views on this objective<sup>34</sup>, most indicated that this objective had been fully achieved (16) or partially achieved (43). Some (11) considered that it had not been achieved. Some of the respondents considering that this objective had either not been achieved or had only partially been achieved referred to (i) the fact that although authorised repairers within the same brand do, in theory, have the right to diversify their sourcing, in practice, they remain largely dependent on the OEMs, mainly for commercial reasons (e.g., bonuses/rebates/audits); (ii) restrictions on the development of aftermarket spare parts or their remanufacturing due to, for example, restrictions brought about by a lack of access to OEMs' parts coding or the integration of logos in the design; (iii) the hampering of Tier1 suppliers by

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<sup>32</sup> A few respondents declared that the objective was not relevant to them (2), that they did not know (4) or did not provide an answer (1).

<sup>33</sup> A fair share of respondents replied that the objective was not relevant to them (10), that they did not know (9) or did not provide an answer (3).

<sup>34</sup> A few indicated that either they did not know (10), it was not relevant to them (2) or did not provide an answer (1).

'tooling arrangements' and the introduction by the OEMs of electronic codes for spare parts; (iv) spare parts suppliers being increasingly requested to transfer IP titles and tooling rights to OEMs; (v) shortages of particular spare parts (e.g., vehicle glass, especially, for new models) as manufacturers often reserve their production for VMs and their authorised dealers, which results in a shortage for the aftermarket and, therefore, limited choice and potentially increased costs for consumers.

The second question of this set asked respondents **whether, since 2010, they had encountered a number of specific restrictions in the context of agreements to which them or their clients were party.**

On resale price maintenance (VBER Article 4(a) and VGL paragraphs 48-49 and 223-229), only 12 respondents reported encountering this restriction in their agreements, and only 4 of these stated to have contested it. Out of the latter, 2 acknowledged that the dispute had been resolved through negotiation/arbitration and none of them indicated that the dispute had ended up in court.

On restriction of authorised dealers' ability to sell motor vehicles or spare parts in other Member States (VBER Article 4(b), VGL paragraphs 50-55 and SGL paragraphs 48-50), only 7 respondents reported finding this type of restriction in their agreements. 6 out of these respondents marked that they had contested the restriction and 3 mentioned that the dispute had been resolved through negotiation/arbitration. None of the respondents stated that their disputes regarding this type of restriction had ended up in court.

On the restriction of authorised dealers' ability to sell motor vehicles or spare parts to end customers (VBER Article 4(c), VGL paragraphs 56-57 and SGL paragraphs 51-52), while 22 respondents stated to have encountered this type of restriction in their agreements, only 6 of them declared to have contested it. Out of the latter, 3 said to have encountered a solution through arbitration/negotiation and 2 replied by saying that "sometimes" they had resolved the dispute through such means. None of the respondents declared that their disputes on this issue had ended up in court.

On the restriction of authorised dealers' ability to sell motor vehicles or spare parts to other dealers within the same distribution system (cross-supplies) (VBER Article 4(d) and VGL paragraph 58), 3 respondents reported having encountered this restriction in their agreements. 2 of them said they had contested the restriction and the same 2 mentioned the dispute had been resolved through arbitration/negotiation. None of the respondents indicated that the dispute had ended up in court.

On the restriction of original equipment suppliers' ability to sell spare parts to end customers or repairers (VBER Article 4(e) and VGL paragraph 59), 34 respondents reported having encountered this restriction in their agreements. However, only 7 acknowledged having contested the restriction and 6 of them declared to have resolved the dispute through negotiation/arbitration. None of the respondents indicated that the dispute had ended up in court.

On the restriction of authorised dealers' ability to sell spare parts to independent repairers (MVBER

Article 5(a) and SGL paragraph 22), whereas 26 respondents reported having encountered this restriction in their agreements, only 6 mentioned that they had contested it. Moreover, 4 of them said that the dispute had been resolved through negotiation/arbitration and none of them declared that the dispute had gone to court.

On the restriction of components / parts suppliers' ability to place their trademark / logo on the components / parts supplied (MVBBER Article 5(c) and SGL paragraph 24), 19 respondents reported having encountered this restriction in their agreements. Out of these respondents, only 1 reported having contested the restriction but did not specify whether the dispute had been resolved through negotiation/arbitration and stated that the dispute had not gone to court.

On single-branding / non-compete obligations (VBER Articles 5(1)(a) and 5(2), VGL paragraphs 66-67 and 129-150 and SGL paragraphs 26 and 28-41), 33 respondents indicated that they had encountered this type of restrictions in their agreements. 9 of these respondents reported having contested the restriction and 7 of them said the dispute had been resolved through negotiation/arbitration. None of the respondents declared that the dispute had gone to court.

On post-term non-compete obligations (VBER Articles 5(1)(b) and 5(3) and VGL paragraph 68), only 1 respondent declared to have encountered this restriction in its agreements. This respondent said the dispute had been resolved through negotiation/arbitration and, therefore, had not ended up in court.

On the restriction on authorised dealers not to sell motor vehicles or spare parts from particular competing suppliers (VBER Article 5(1)(c), VGL paragraphs 69 and 182 and SGL paragraph 27), 6 respondents indicated that they had encountered this type of restriction in their agreements. 5 of them indicated that it had contested the restriction and 2 said the dispute had been resolved through negotiation/arbitration. None of the respondents declared that the dispute had gone to court.

On the restriction of independent operators' access to technical information (SGL paragraphs 62-68), 46 respondents replied that they had encountered this restriction in their agreements. 29 of them said they had contested the restriction and 7 said that (sometimes) the dispute had been solved through negotiation/arbitration. 3 respondents said that the dispute had gone to court but that the court had not found that restriction breached EU competition law.

On misuse of warranties (SGL paragraphs 49 and 69), 41 respondents replied that they had encountered this type of restriction and 32 out of them declared they had contested it. 23 respondents said that (sometimes) the dispute had been solved through negotiation/arbitration and 8 said that the dispute had gone to court. According to 5 respondents, in their cases the court found that the restriction was in breach of EU competition law.

On the restriction on the number of authorised repairers within a brand network (SGL paragraph 70), 32 respondents indicated that they had encountered this type of restriction in their agreements. 25 of them declared to have contested the restriction and 6 said the dispute had been resolved through

negotiation/arbitration. In 5 cases, respondents indicated that the dispute had gone to court and in 1 of these, the respondent said the court had found the restriction was in breach of EU competition law.

On the requirement that authorised repairers within a brand network also sell vehicles of the brand (SGL paragraph 71), 7 respondents indicated that they had encountered this type of restrictions in their agreements and that all of them had contested it. 1 of these respondents said that the dispute had been resolved through negotiation/arbitration and 5 said that the dispute had ended up in court. Only 1 respondent said that the court had found the restriction to be in breach of EU competition laws.

The third question of this set asked respondents whether they had encountered **any conduct on the part of a contractual partner that, in their view, served as an indirect means of achieving anti-competitive results**. A majority of respondents (52) replied “yes”<sup>35</sup>. Some of the specific practices identified by the latter were:

- Restrictions to access technical information and in-vehicle data. One of the examples given by respondents was the provision of outdated or incomplete information which, according to these respondents, can result in an inability to perform repairs/maintenance, inaccurate/inefficient repairs, loss of trust in the independent data publishers that provide access to that information and, allegedly, even safety risks for drivers. Another issue raised was the slow processing of requests or the application of excessive fees for accessing technical information which, the respondents reported, can drive independent data publishers out of the business or prevent them from developing competitive products.
- Refusal to access the official network of repairers which, in the view of some respondents, results in a decrease in intra-brand competition.
- Bundling of captive and non-captive parts in sales to independent repairers.
- Anticompetitive application of bonus/rebates schemes and pricing/commercial terms, leading to the exclusion of competitors in the aftermarket. For example, discounts being refused if leasing companies offer vehicles for private lease may allegedly result in input foreclosure and limit competition on the private lease market. Decreasing basic discounts or increasing promotional campaigns has been alleged by these respondents to amount to indirect resale price maintenance.
- Obligations to register and use vehicles in the country of purchase can result in restrictions of the territory into which, or of the customers to whom, leasing companies may lease the contract goods.
- The misuse of warranties to (i) funnel consumers to authorised repairers, thereby *de facto* excluding independent repairers, or (ii) restrict parallel imports.
- Automatic cession/license of IP rights may make it impossible for OES to sell to the aftermarket.

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<sup>35</sup> Primarily associations representing parts dealers and vehicle dealers/importers, but also parts dealers, vehicle dealers and vehicle leasing rentals. Some respondents (14) replied that they had not encountered any such conduct, some declared not to know (12) and a few did not provide an answer (5).



- Direct sales by VMs (including online sales) puts authorised dealers at a competitive disadvantage, as they are not able to offer competitive prices to consumers. In addition, the fee paid to dealers for delivering and preparing a car that has been purchased directly from the VM is too small to make the dealers' business profitable.
- Termination of dealer contracts without giving reasons, even if the operator respects the criteria of the selective network. This results in less choice for consumers.
- The use of applications installed in cars to direct consumers to authorised dealers/authorised repairers rather than independent repairers in case of breakdown or necessary maintenance.
- Making OES obtain VMs' consent before using tooling paid by VM to make parts for direct aftermarket supply, such consent being usually subject to a payment on the part of the IAM for each part produced.
- Cartels between OES.
- Refusals on the part of VMs to supply spare parts to independent wholesalers.
- VMs failing to grant end-user status to leasing companies.

Finally, the last question of this set asked **whether there is there a code of conduct / practice** that applies to contractual relations between the respondents and their contractual partners in the motor vehicle sector. Most respondents said that there was no such code of conduct / practice (35), while some declared the opposite (25)<sup>36</sup>.

#### 2.2.4 Legal certainty: clarity for firms as to what the law means

The first question of this set asked respondents **whether, based on their experience, the motor vehicle block exemption rules have achieved legal certainty.**

A majority of respondents (48) considered that the aim had been achieved<sup>37</sup>, while some (15) believed the opposite<sup>38</sup>. The latter supported their views by referring, among other things, to: (i) self-assessment being difficult and costly for SMEs; (ii) distributors' increased dependence on manufacturers as a result of the removal of the sector-specific block exemption from contracts for the sale of new vehicles; (iii) the drop in basic margins and the increase in promotional campaigns by OEMs reducing distributors' to set their own prices; (iv) the low risk that those who commit anti-competitive practices will be sanctioned; (v) national courts not following the provisions of the MVBBER and SGL; and, (vi) the removal of certain definitions/clauses that were present in the previous MVBBER.

The second question of this set asked whether the **definitions contained in the motor vehicle block**

<sup>36</sup> A few declared not to know (12), that they had no contractual relations with other companies in the motor sector (6) or did not provide an answer (5).

<sup>37</sup> Primarily associations representing parts dealers, parts manufacturers and vehicle dealers, but also parts dealers, parts manufacturers and VMs replied in this sense. 17 respondents declared not to know and 3 did not provide an answer.

<sup>38</sup> Primarily associations representing vehicle dealers, but also individual undertakings (mostly vehicle dealers, parts dealers and repairers).

**exemption rules have increased legal certainty** compared to a hypothetical situation in which no such rules existed.

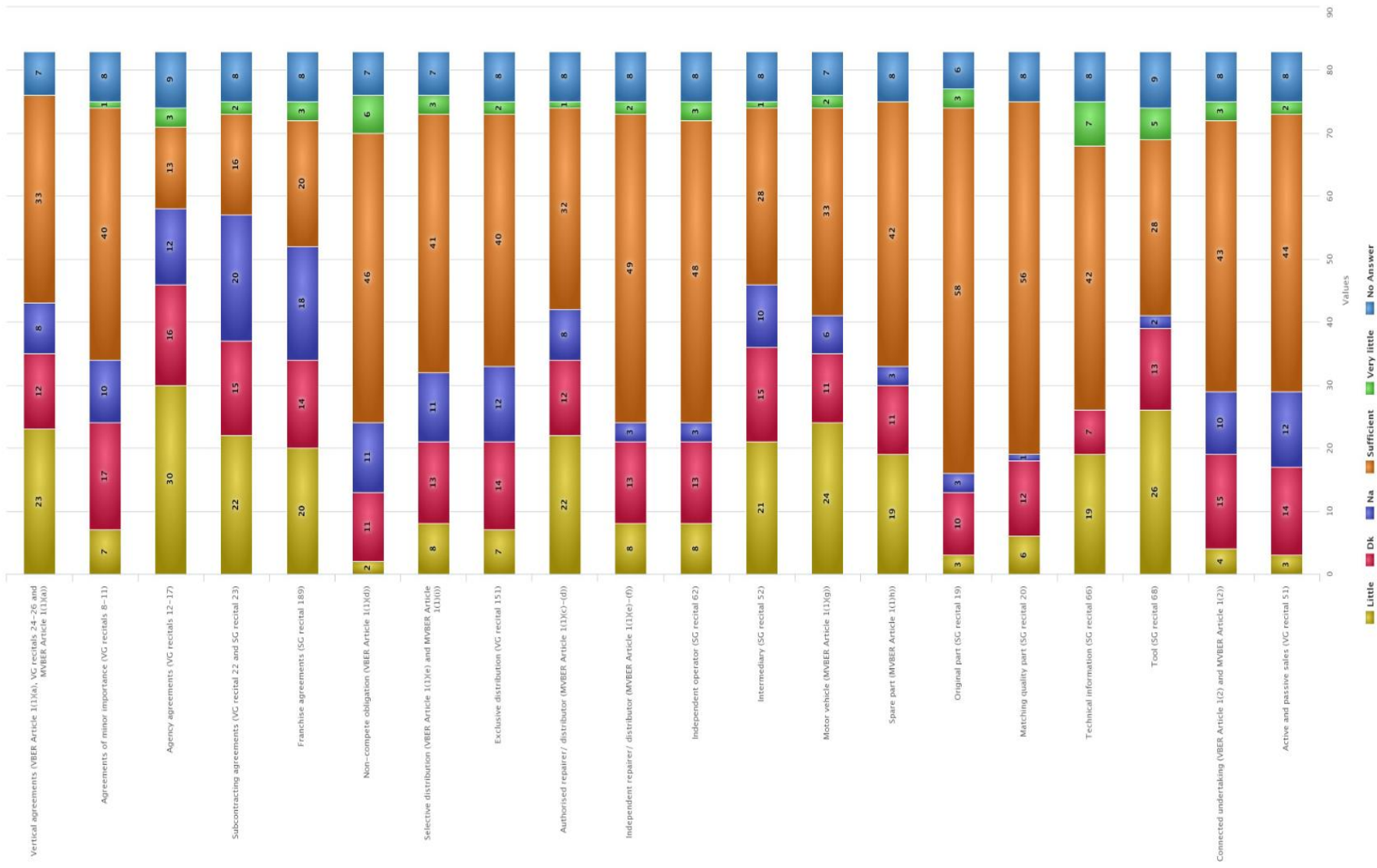


Figure 8 – Legal certainty achieved by definitions

As regards the definition of “vertical agreements” (VBER Article 1(1)(a), VGL paragraphs 24-26 and MVBBER Article 1(1)(a)), some of the respondents considering that the definitions had done “little” to increase legal certainty pointed out that (i) references to online and direct sales are missing; and that (ii) clarification was needed as to the circumstances under which agreements between dealers and online platforms may constitute “vertical agreements” for the purpose of the VBER.

As for the definition of “agreements of minor importance” (VGL paragraphs 8-11), the few respondents which selected the option “little” or “very little” explained their view that (i) the market share threshold should not be 15% but rather 5%; and, that (ii) it could be useful to add some practical examples of cases where although *de minimis* threshold is not reached, the presence of a *hardcore* restriction nonetheless leads to the application of Article 101 of the Treaty.

On the definition of “agency agreements” (VGL paragraphs 12-17), some of the respondents considering that this definition had done little or very little to increase legal certainty indicated that (i) the current rules seem too restrictive in that they prevent agents from undertaking "other activities within the same product market required by the principal, unless these activities are fully reimbursed by the principal"; (ii) as the difference between genuine agents and non-genuine agents is allegedly not sufficiently clear, it would be good to include some examples in the VGL; (iii) the term “commercial agent” should be defined, particularly in light of the increase in agency sales as well as sales over online platforms; and, (iv) the circumstances under which car dealers can be considered as agents rather than authorised distributors should be clarified.

Concerning the definition of “subcontracting agreements” (VGL paragraph 22 and SGL paragraph 23), some of the respondents considering that this definition had done “little” or “very little” to increase legal certainty stated that the SGL are helpful on subcontracting restrictions but should nonetheless be updated to improve legal certainty.

With regard to the definition of “franchise agreements” (VGL paragraph 189), some of the respondents considering that this definition had done “little” or “very little” to increase legal certainty referred to lack of clarity as to the possibility to use franchise agreements in the motor vehicle sector.

On the definition of “non-compete obligation” (VBER Article 1(1)(d)), some of the respondents considering that this definition had done “little” or “very little” to increase legal certainty mentioned that the previous MVBBER did not apply to provisions obliging dealers to buy more than 30 % of their total purchases on the relevant market from one single supplier (such obligations were subject to individual self-assessment as to their compatibility with Article 101 of the Treaty). This provision no longer exists in the current MVBBER, with claimed adverse effects.

On “selective distribution” (VBER Article 1(1)(e) and MVBBER Article 1(1)(i)), some of the respondents considering that this definition had done “little” or “very little” to increase legal certainty pointed out that this definition did not distinguish between qualitative and quantitative selective distribution.

As for the definition of “exclusive distribution” (VGL paragraph 151), some of the respondents considering that this definition had done “little” or “very little” to increase legal certainty claimed that onerous requirements relating to corporate identity were reducing business opportunities available to dealers.

On the scope of the term “independent operator” (SGL paragraph 62 – the list of operators from whom “technical information” within the meaning of paragraph 65 should not be withheld), some of the respondents considering that this had done “little” or “very little” to increase legal certainty argued that the list should be expanded to include insurance companies.

As for the definition of “intermediary” (SGL paragraph 52), some of the respondents considering that this definition had done “little” or “very little” to increase legal certainty argued that this definition was too strict for the opening given to such operators to be used in practice.

On the definition of “motor vehicle” (MVBBER Article 1(1)(g)), some of the respondents considering that this definition had done “little” or “very little” to increase legal certainty referred to the fact that it needed to be updated to reflect technical developments (connectivity/digitalization), while others argued that a definition of “new vehicle” was needed.

With regard to the definition of “spare part” (MVBBER Article 1(1)h)), some of the respondents considering that this definition had done “little” or “very little” to increase legal certainty argued that this definition should be updated to reflect technical developments and that the word “component” should not be used, as this term is not normally used to describe certain goods included in the definition, such as lubricants. The suggestion would be to replace this word by “parts” and to define “parts” as “goods used for the assembly, repair and maintenance of a vehicle, as well as spare parts”. According to these operators, a distinction between “repair parts” and “consumable parts” should also be considered.

On the definition of “original part” (SGL paragraph 19), some of the respondents considering that this definition had done “little” or “very little” to increase legal certainty argued that the choice available to consumers and repairers would be fairer and prices would be more reasonable if the term “original parts” was also used for parts that did not bear the car manufacturer’s brand, but were nonetheless produced by the OES on the same production line as the parts used in the original equipment. This, it was argued by some, would improve the choice of consumers and repairers and reduce prices.

Regarding the definition of technical information (SGL paragraph 66), some of the respondents considering that this definition had done “little” or “very little” to increase legal certainty pointed out that this definition could usefully be adapted to technical progress (so-called “digitalization”). These respondents argued that some terms in paragraph 67 SGL require more precise definitions such as (i) the description of the way in which technical information is being supplied (in particular what should be considered information “in a usable form”); (ii) the term “without undue delay”; and, (iii) under what conditions the price charged for access to technical information does “not discourage access to

it". The definitions should take account of the specific situation of data publishers, whose needs differ from those of repairers. The definition should be amended and aligned with the definition included in the Type Approval Regulation 2018/858 ("TAR").

As for the definition of "tool" (SGL paragraph 68), some of the respondents considering that this definition had done "little" or "very little" to increase legal certainty pointed out that this definition should also be updated as technical developments occur. The term "tools" is not defined clearly enough in paragraph 68 SGL. It should also include software codes for spare part learning.

With regard to "connected undertaking" (VBER Article 1(2) and MVBBER Article 1(2)), some of the respondents considering that this definition had done "little" or "very little" to increase legal certainty indicated that this reference is arguably inconsistent with the definition of undertaking as an economic unit.

On the rest of definitions, the respondents which selected the option "little" or "very little" did not provide any specific explanations for their views.

The third question of this set asked respondents to evaluate **whether the provisions of the motor vehicle block exemption rules have increased legal certainty** compared to a situation in which no such rules existed<sup>39</sup>.

*General provisions*

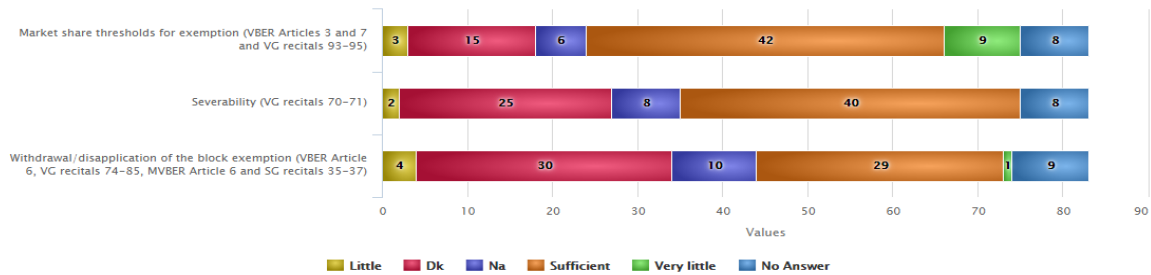


Figure 9 – Legal certainty achieved by general provisions

On market share thresholds for exemption (VBER Articles 3 and 7 and VGL paragraphs 93-95), some of the respondents considering that this definition had done "little" or "very little" to increase legal certainty flagged that legal certainty is prevented by the fact that the high market share thresholds have little or no application in the motor vehicle market due to its fragmented structure. On severability (VGL paragraphs 70-71) and the withdrawal/disapplication of the block exemption (VBER Article 6, VGL paragraphs 74-85, MVBBER Article 6 and SGL paragraphs 35-37), those respondents considering that this definition had done "little" or "very little" to increase legal certainty did not

<sup>39</sup> The paragraphs below contain the main comments raised by respondents. Comments have been classified manually by the Commission according to topic. Comments which were not clear have not been reflected in this section.

provided specific explanations for their position.

*Hardcore restrictions*

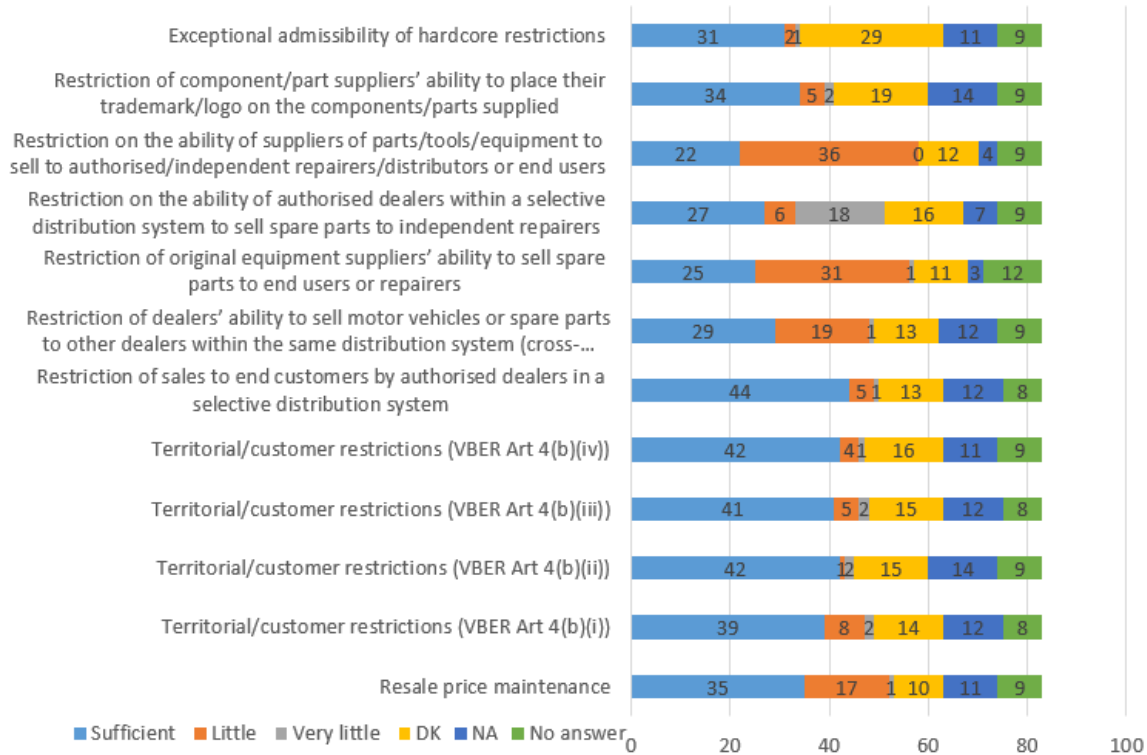


Figure 10 – Legal certainty achieved by hardcore restrictions

On resale price maintenance (VBER Article 4(a) and VGL paragraphs 48-49 and 223-229), respondents which selected the option “little” or “very little” argued that resale price maintenance was justifiable in cases where new products or innovative services are launched. As the same should be true in other sectors, this matter would be best addressed in the review of the VBER. An association of dealers reported that maximum prices can turn into fixed prices in practice.

With regard to territorial/customer restrictions (VBER Article 4(b)(i) and VGL paragraphs 50-54), some of the respondents which selected the option “little” or “very little” argued that the possibility for the supplier to restrict the sales of distributors to a clientele that the supplier has exclusively reserved for itself should be exempted only on condition that the sales made by the supplier to these customers do not represent more than 20% of the overall volume of its sales. In addition, they referred to the fact that manufacturers/suppliers may wish to sell directly to consumers online and may therefore curb authorised resellers’ online sales by imposing disproportionate quality standards and platform bans. Further guidance on this point would be helpful.

On territorial/customer restrictions (VBER Article 4(b)(iii) and VGL paragraphs 50 and 55), a respondent

which selected the option “little” or “very little” mentioned that there was a lack of clarity in respect of obligations with a territorial dimension in selective distribution and as to the availability of franchising agreements. This respondent argued that clarity was necessary as to whether specific territorial obligations may be imposed.

As for the restriction of original equipment suppliers’ ability to sell spare parts to end users or repairers (VBER Article 4(e) and VGL paragraph 59), some respondents which selected the option “little” or “very little” mentioned that technical barriers (e.g., coding of spare parts and the requirement for software activation of replacement parts with OEMs’ proprietary codes) currently limit Tier1 suppliers’ ability to sell spare parts to end users/repairers/distributors. This effectively blocks the implementation of VBER Article 4(e)/VGL paragraph 59. They also added that spare parts manufacturers often reserve their production for VMs and their authorised dealers, thereby resulting in a shortage for the aftermarket (e.g., in glass for vehicles) and limiting choice and potentially increasing costs for consumers.

On all the other *hardcore* restrictions, respondents which selected the option “little” or “very little” did not provide specific explanations for their position.

### Specific vertical restraints

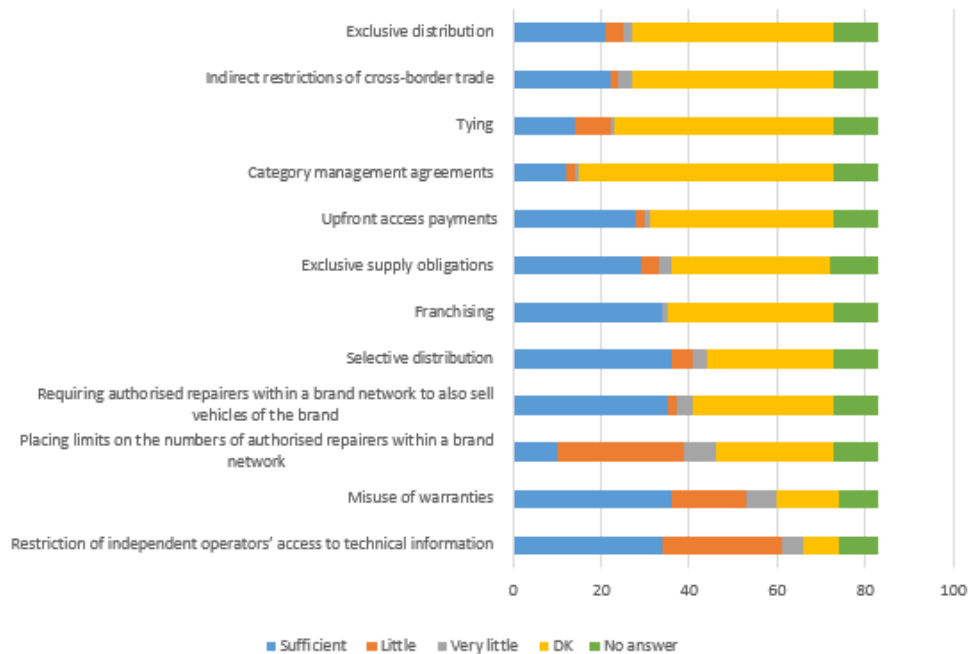


Figure 11 – Legal certainty achieved by specific vertical restraints

On the restriction of independent operators’ access to technical information (SGL paragraphs 62-68), many stakeholders provided their views:

- A data publisher advocated for a better definition of the format of technical information to be



provided to independent operators (e.g., data publishers) who need to aggregate and process it. Paragraph 67 SGL only states that this information should be provided in a “usable form”, without further details. It was argued that the term “usable form” should take into account the role of the respective independent operator in the supply chain and, therefore, should explicitly mean provision to publishers and others of mass/bulk data in the form of unrestricted electronically actionable datasets. In addition, MVBBER rules should also clarify that any fees for technical information should be solely based on the actual costs stemming from the technical / organisational provision of access.

- A motorists’ association referred to the tendency of VMs to classify parts as being “security parts” to make independent repairers’ access to technical information more difficult. This concern was also echoed by data publishers, which stated that it should be clarified that technical information encompasses all information, including software and algorithms needed to perform any diagnostic job without impediments.
- The same motorists’ association stated that independent operators have no control over the costs charged by OEMs for accessing the in-vehicle data needed to provide repair/maintenance. It argued that disproportionate prices had a deterrent effect and limited fair competition between authorised and independent repairers. Moreover, a lot of cars are provided with a digital service booklet. Although the IAM is generally granted access to the VM tools for updating the booklet, technological and bureaucratic barriers are high in that each VM has different requirements for access, uses different software and has different handling processes.
- A repairers’ association expressed that the lack of consistency of platform and platform structure as well costing models made accessing VM technical information time and cost prohibitive and detrimental to consumer choice.
- An EU citizen suggested that there should be guidelines in which it is more precisely defined what further training and diagnostic tools must be accessible for independent repairers. Independent repairers should have access to the in-vehicle generated service data and thus should be able to carry out remote maintenance. In-vehicle generated data should be stored centrally, independently of the manufacturer.
- An association representing dealers, intermediaries, agents, leasing/rental, repairers, parts’ dealers asked for more clarity with regard to access to in-vehicle data. It argued that access to all information related to parts, reset error codes, update software, electronic central units (“ECUs”), equivalences between OEM and IAM parts, VIN, etc. should be guaranteed.
- Some parts dealers, repairers and their associations said that the definition of “technical information” should be updated more explicitly following the increased interconnectivity of

components inside the vehicle and digitization. Regarding activation codes and software needed to activate spare parts, these respondents mentioned that VMs are installing increasingly proprietary security measures (for example, coding (QR) or software) needed to activate spare parts and systems (e.g., for setting up an engine after changing nozzles). To enable the consumer to have safe and secure and competitive aftermarket spare parts, these codes must be provided / licensed to Tier1 and aftermarket suppliers to ensure safe and secure interoperability and to enable direct use of multi-brand tools.

- A Chamber of Commerce suggested that the SGL should refer to the definitions and detailed provisions of the TAR that govern access to repair and maintenance information. There should be only one definition of "repair and maintenance information" in EU law.

On the misuse of warranties (SGL paragraph 69), respondents identified as an importer/dealer/repairer and an academic institution mentioned that consumers are still dissatisfied with the fact that repair and maintenance work that is not covered by the warranty can, in practice, only be carried out by authorised repairers. These respondents also alleged that garage owners were also still obliged to use original spare parts from the manufacturer. In addition, they submitted that warranties on new and second hand cars are used to pressurise consumers to have repair and maintenance services carried out by authorised repairers. Associations representing importers, dealers, intermediaries, leasing/rental and repairers have argued that the market requires clarification as to whether authorised repairers may legitimately refuse to honour the warranty on vehicles purchased from independent resellers, as current warranty practices deter parallel trade in new motor vehicles. A repairer also suggested that there should be more legal certainty with regards to warranties on second-hand vehicles.

On placing limits on the numbers of authorised repairers within a brand network (SGL paragraph 70), VMs have flagged that courts in different countries are giving diverging assessments of the extent to which VMs can adopt measures that indirectly limit the number of authorised repairers, thereby undermining legal certainty. Considering the growing technical complexity of vehicles and the increasing investment cost for repairers, VMs see a significant risk of underinvestment if they are not allowed to place quantitative limits on the number of authorised repairers. This would undermine service quality as well as the reputation of the brand, since consumers associate authorised repairers with the brand they represent. In contrast, associations representing dealers, parts' dealers and repairers have argued that the refusal by supplier to re-approve a repairer meeting the qualitative selective criteria should constitute a *hardcore* restriction, without it being necessary to demonstrate that such a refusal of approval falls within the framework of a "general policy" of the supplier.

With regard to requiring authorised repairers within a brand network to also sell vehicles of the brand (SGL paragraph 71), some respondents identifying themselves as importers, dealers, parts dealers and repairers as well as an academic institution have claimed that VMs put limits on the number of authorised repairers and refuse access to companies that do not also wish to sell new cars.

As for exclusive supply obligations (VGL paragraphs 192-202), some parts manufacturers, parts dealers and their associations have raised the example of a major oil company, partner of an OEM, which only supplies the authorised network with the lubricant “recommended” by the OEM for a certain period of time. These respondents indicate that as a consequence, often during this period, no other product matching the OEM’s technical specifications is available on the market.

On indirect restrictions of cross-border trade (SGL paragraphs 49-50), some associations representing importers, dealers, intermediaries, leasing and rental, and repairers have stated that VMs continue to market new cars without always supplying the Certificate of Conformity (“CoC”) in paper format. As a result, consumers, agents and both authorised as well as independent retailers struggle with cross-border transactions due to the missing CoC, since the car in question may not be registered in the target country without it.

On the rest of specific vertical restraints, respondents which selected the option “little” or “very little” did not provide specific explanations on their position.

The fourth question of this set asked respondents to point out any other areas where, in their view, there is a **lack of legal certainty**<sup>40</sup>.

A competition lawyers’ association submitted that there is significant lack of clarity as to when spare parts and services would merit defining as a separate relevant market. According to this association, market evolution suggests that a greater proportion of customers consider the aftermarket in their initial choice. In the view of this association, it would be appropriate to maintain a block exemption regulation and guidelines, while avoiding the adoption of frequently asked questions (“FAQ”) or similar. Associations of dealers/importers argued that dealers should have the freedom to sell their dealership to any other dealer (of the same brand), and that this should be mentioned in the MVB ER rules, and that the exemption should be once more removed from contracts that do not contain specific provisions on “dealer protection”.

The last question of this set concerned paragraph 66 SGL, which includes a non-exclusive **list of items commonly provided to authorised repairers and that should be considered as technical information that should not be withheld from independent operators. Respondents were asked to identify any other items provided to authorised repairers that, in their view, should have been considered as technical information for the purposes of the motor vehicle block exemption rules.**

Some of the main items referred to by stakeholders were: (i) digital service/maintenance records and over-the-air technology and services; (ii) information embedded in OEMs’ proprietary tools; (iii) the standardized billing times for service; (iv) with respect to connected and automated vehicles: the diagnostics, software update and security-related functions; (v) technical specifications for lubricants and other fluids used for vehicle maintenance; (vi) human machine interface (HMI) functions and

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<sup>40</sup> Points included as reply to this question that were already mentioned in the replies to the previous set of questions have not been included here to avoid repetition.

resources; (vii) OBD; (viii) mileage (odometer) reading, days and miles to next maintenance service, longitude & latitude, g-forces, emission data; (ix) information to code and calibrate advanced driver assistance systems; (x) in-vehicle consumer "personal" data, provided that the consumer/individual has agreed to share it; (xi) apps on-board the vehicle (e.g., to inform the customer about upcoming repair and maintenance requirements); (xii) prices for VM-branded parts; (xiii) cybersecurity information; (xiv) information about EVs (e.g., electrical motors, battery pack, battery status, cable, electrical components which work on 15V or higher); and, (xv) training provided directly by VMs (e.g., face-to-face or online training).

In addition to the specific items above, some respondents also included a few general comments. Several referred to the format and timescale for the release of technical information. In particular, they argued that VMs should release accurate and updated technical information to independent operators within a defined period of time after making it available to their own network. In their view, full, open and clear release notes should be available in a common format so independent repairers can quickly establish which is the latest version of a given item of technical information. A few respondents argued that it would make sense to refer in the SGL to the definition and detailed provisions of the TAR governing access to repair and maintenance information. Some others underlined that the reference to the fact that "the notion of technical information is fluid" included in the SGL is very important, but is not equally echoed in the TAR.

## **2.2. Efficiency (Were the costs involved proportionate to the benefits?)<sup>41</sup>**

The first question of this set asked respondents to identify the **types of costs incurred when assessing whether vertical agreements can benefit from the motor vehicle block exemption rules** (namely the VBER, the MVBBER, the VGL and the SGL).

Most respondents referred to costs for external counsel and internal administrative costs, followed by costs for internal lawyers. A minority mentioned that they had not incurred any costs or that they had incurred other types of costs. A few did not provide an answer to this question.

The second question of this set asked respondents to provide an **estimate of the amount of such costs on an annual basis both in terms of value (in EUR) and as a percentage of the respondents' turnover**.

Among the respondents that actually provided an estimate (9)<sup>42</sup>, costs seem to range from EUR 10,000 to EUR 140,000. On the lower range of costs, there is an insurance company (EUR 10,000 to 15,000); a parts' manufacturer/dealer (EUR 20,000); a parts manufacturers' association (EUR 20,000 to 40,000, corresponding to 1% of the association's budget<sup>43</sup>); a company which reported itself to be a dealer,

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<sup>41</sup> Respondents which did not provide any reply to any of the questions of the "Efficiency" section are not taken into account in the graph below.

<sup>42</sup> A majority of respondents (45) did not reply to this question. Some declared not to know, being unable to make such an estimate or replied with "N/A", and some provided a reply that did not address the actual question.

<sup>43</sup> This association attributed the above costs to external support for the evaluation of the VBER and MVBBER.

parts' dealer, and repairer (EUR 20,000); and a small company which identified itself as a dealer, parts dealer and repairer (around EUR 40,000<sup>44</sup>). At the higher range of reported costs was an association representing dealers, importers and repairers (EUR 100,000<sup>45</sup>); an association representing parts dealers and repairers (over EUR 100,000); and a large car parts dealer (EUR 140,000, corresponding to 0.1% of its turnover). Finally, two respondents only provided the requested data as a percentage of their sales and profit: both an association representing dealers, importers and repairers, and an academic institution declared that these costs represented 1-5% of sales or 1-20% of profit. No VM provided figures on the costs incurred to assess the VBER/MBVER.

The third question of this set asked respondents to indicate **whether they consider costs to have been proportionate to the benefits that the motor vehicle block exemption rules have brought.**

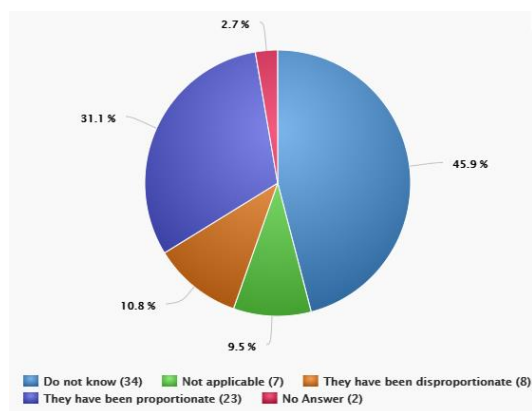


Figure 12 – Proportionality of costs

Only a few of the respondents that considered the costs to be disproportionate provided any explanations as to the reasons for their position. One of these respondents argued that applying the MVBER and the SGL directly and proving the effects of practices on the market and consumers was so difficult that the costs were not proportionate to the benefits. This respondent also argued, however, that if the MVBER were not prolonged, legal uncertainty would increase. Another respondent mentioned that the legal costs of a dispute do not outweigh the potential benefits of challenging behaviour since the probability of success is low. Another reported that they had lost court cases, so in their case the costs did not compensate the benefits. Finally, a respondent mentioned that, in their experience, the legal costs of challenging particular behaviour had been disproportionate for individual dealers and legal proceedings had been long.

The last question of this set asked respondents to provide an estimate of the **level of assessment costs they would have incurred if the assessment had had to rely directly on Article 101 of the Treaty** (i.e., no motor vehicle block exemption rules).

<sup>44</sup> This respondent indicated that their insurance had covered around EUR 30,000 of these costs.

<sup>45</sup> The association specified that this amount corresponded to a dealer's cost for cartel proceedings.

The large majority (55) of respondents considered that without the motor vehicle block exemption rules, assessment costs would have been higher. Only 2 respondents said that costs would have been the same, and 1 respondent said that costs would have been lower without the MVBER regime<sup>46</sup>. None of the respondents that estimated that costs would have been the same or lower without the MVBER regime gave any reasons behind their view.

### ***2.3. Relevance (Do the objectives of the rules still correspond to the current needs?)***<sup>47</sup>

The first question of this set asked respondents to identify any **changes affecting their business since 2010 that, in their view, should be reflected in the objectives of the block exemption rules covering the motor vehicle sector** (namely of the VBER, the MVBER, the VGL and the SGL).

The changes most frequently identified by respondents mainly concern technology developments and business model developments. As for technology, respondents referred to connected cars, digitalization, (access to) in-vehicle and users' data, electric vehicles, new types of engines (e.g., electric or hydrogen engines), development of ADAS, the rising number of sensors, the rising use of electronics and software (e.g., software as a spare part), cybersecurity, remote connectivity/over-the-air technology (including remote diagnosis and remote repair), and independent operators' increasing need for training. As for business model developments, respondents mentioned increasing direct sales by VMs, more renting/leasing, increasing use of car sharing, bundling of warranties with maintenance/servicing contracts or issues with second-hand vehicle warranties, issues with the parallel trade of vehicles, growing concentration among VMs, an expected decrease in spare parts market size as a result of electrification of vehicles (which may require less maintenance), and the fact that market shares of manufacturers and dealers are below 30%.

In addition to the above, some respondents mentioned the need for: (i) the imposition of higher demands on the timeliness for the provision of technical information; (ii) the adoption of additional protection around the end-user status of leasing and rental firms; (iii) the explicit mention of insurance companies as independent operators. Some respondents mentioned current problems such that when spare parts (e.g., car glass) are in short supply, manufacturers privilege their own network over independent operators; or that manufacturers / importers require resellers to disclose business-critical data about their customers, profitability, pricing, etc., while, at the same time, they compete with those resellers at the same level of distribution. Finally, some dealers pointed to the fact that the application of the exemption to dealership agreements was no longer conditional on the inclusion of contractual stipulations. These dealers claimed that the change meant that they were no longer free to transfer their distribution contract to other authorised dealers, that they had reduced protection if their contracts were terminated, and that there were barriers to multi-brand distribution.

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<sup>46</sup> 9 respondents declared not to know, 6 declared that the question was not applicable to them and 1 did not provide an answer.

<sup>47</sup> Respondents which did not provide any reply to any of the questions of the "Relevance" section are not taken into account in the graph below.

The second question of this set asked respondents **whether the objectives of the motor vehicle block exemption rules are still relevant today.**

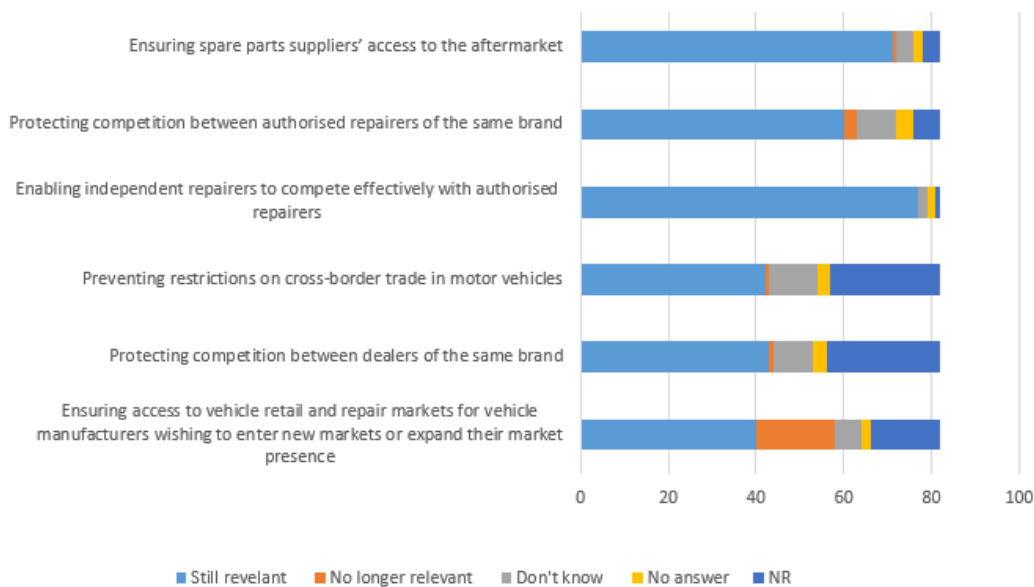


Figure 13 – Relevance of objectives

On ensuring access to vehicle retail and repair markets for VMs wishing to enter new markets or expand their market presence, respondents which selected the option “no longer relevant” explained that VMs have full opportunities to enter new markets. They have and are expanding quite aggressively into servicing and repair markets through, among others, bundling the sale of new vehicles with extended warranties/servicing contracts or pooling the full range of OEM-branded spare parts on online platforms. One respondent also pointed out that, in some Member States, authorised repairers have very high market shares (over 50% in the quantity of services provided, and over 60% in terms of value). In the view of this respondent, VMs may enter any market easily by building their own network of authorised repairers or by concluding agreements with existing IAM garage networks.

As to the rest of the objectives, the respondents which selected the option “no longer relevant” did not provide any explanation for their replies.

The third question of this set asked respondents to **(i) describe any other objectives that, in their view, the Commission should pursue in respect of vertical agreements in this sector, and (ii) to explain their relevance for competition on the markets in question.**

Some of the main points identified by stakeholders were:

- Ensuring the full reparability of vehicles and the remanufacturing and recycling of spare parts to respond to sustainability goals.
- Discouraging (new) business practices which weaken competition, such as the bundling of purchasing contracts, servicing contracts and warranties.

- Ensuring a level playing field with regard to access to in-vehicle data, including technical information and data linked to connected vehicles, for all stakeholders, (while taking into account consumers choice to share such data).
- Guaranteeing the cybersecurity of vehicles while enabling fair competition to protect the interests of the consumer. Prevention of market foreclosure to the detriment of independent workshops via so-called "Security Gateways" or comparable mechanisms.
- Ensuring independent distributors' access to OEM-branded parts.
- Protecting inter-brand competition of dealers and repairers.
- Ensuring that authorised dealers can participate in direct sales (including online sales) or limiting the volume of direct sales by OEMs (to e.g., 20 percent).
- Ensuring that agreements between OEMs and authorised dealers contain clauses protecting the latter.
- Considering more frequent updates of the motor vehicle block exemption rules (10 years may be too long).
- Considering the impact of "over the air diagnosis", which allows VMs and authorised dealers to contact customers directly and to offer innovative services.
- Ensuring that independent repairers have access to advanced training, face-to-face training and online training from the manufacturer.

The last question in this set asked respondents to indicate **whether**, in their view, **the material scope of the sector-specific regime for vertical agreements concerning motor vehicles**, defined in Regulation 461/2010 as self-propelled vehicles intended for use on public roads and having three or more road wheels was **still appropriate**.

24 respondents considered that the current scope was still appropriate<sup>48</sup>, whereas 47 believed that the current definition should be widened<sup>49</sup>. The group of respondents advocating for the current scope to be widened mainly mentioned the following categories of vehicles that should be included in the motor vehicle block exemption rules: two wheel vehicles (mainly motorbikes, but some also mentioned electric bikes or electric scooters); vehicles not meant for roads (such as agricultural machinery, tractors and forestry vehicles, construction vehicles). Some stakeholders mentioned that it would be advisable to have specific mentions for electric vehicles.

#### ***2.4. Coherence (Are the rules consistent internally and with other EU rules?)***

The first set of questions in this section asked respondents to indicate **whether**, in their experience, **there were any inconsistencies or contradictions within any of the individual instruments making up the motor vehicle block exemption rules** (VBER, VGL, MVBBER and SGL).

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<sup>48</sup> Primarily associations representing vehicle dealers and VMs, but also companies (mainly parts dealers, parts manufacturers and repairers).

<sup>49</sup> Primarily associations representing parts dealers, parts manufacturers, vehicle dealers or vehicle importers, but also companies (mainly parts dealers, but also other types of market operators such as repairers).



The views on this question were divided. Whereas 27 respondents considered that there were inconsistencies or contradictions<sup>50</sup>, 27 believed that there were none<sup>51</sup>.

Some of the respondents considering that inconsistencies existed further details on their position. For example, according to certain respondents, although not an inconsistency as such, Article 5b MVBER also prevents restrictions on the original equipment supplier's ability to sell spare parts to wholesalers. This is an important difference between VBER and MVBER which, according to these respondents, the questionnaire did not capture. Another respondent argued that the existence of specific rules for one sector of the economy (motor vehicles) in itself raised a consistency issue. According to this respondent, the structure of the regime (MVBER, SGL and FAQ) also raised similar issues. Finally, this respondent submitted that there are inconsistencies/lack of clarity in respect of geographical limitations and the treatment of guarantees.

The second question of this set enquired whether, in the respondents' experience, there are **inconsistencies or contradictions between the instruments that make up the motor vehicle block exemption rules (for example, instances where a provision of the MVBER is inconsistent with a provision of the VBER).**

The large majority of respondents (48) believed that there were no inconsistencies or contradictions<sup>52</sup>, while only a minority of respondents (3) indicated that such inconsistencies or contradictions were present<sup>53</sup>. A respondent in the latter group mentioned that the definition of a separate relevant market for each brand has the effect of impeding quantitative limitations in selective repair networks (see paragraph 70 SGL). This, the respondent claimed, was inconsistent with the general framework on vertical restrictions and contractual freedom generally and did not seem necessary in view of the notable increase in competition from independent networks. Another respondent mentioned that paragraph 19 SGL refers to the definition of "original part" or "original equipment" in the type approval framework Directive 2007/46/EC. However, the latter has been replaced by TAR, which does not contain this definition. Therefore, the definitions of parts should remain anchored in the SGL.

The third question of this set asked whether, in the respondents' experience, there were any **inconsistencies or contradictions between the motor vehicle block exemption rules and other Commission instruments that lay down rules or provide guidance on the application / interpretation of Article 101 of the Treaty** (such as other block exemption regulations, the Horizontal Guidelines, the Notice on the definition of the relevant market or the Guidelines on the application of Article 101(3) of the Treaty).

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<sup>50</sup> Primarily associations representing parts dealers, but also companies (mainly parts dealers).

<sup>51</sup> Primarily associations representing vehicle dealers and VMs, but also other types of stakeholders.

<sup>52</sup> Primarily associations representing parts dealers/importers, vehicle dealers or VMs, but also companies (mainly parts dealers and vehicle dealers/importers, but also other types of stakeholders).

<sup>53</sup> Namely, an association representing vehicle dealers, an association representing parts' dealers and an association of competition lawyers.

While 28 stakeholders indicated that, in their view, there were no such inconsistencies/contradictions<sup>54</sup>, 19 replied that, in their view, such inconsistencies/contradictions were present<sup>55</sup>. The respondents which identified inconsistencies or contradictions were asked to elaborate on their position<sup>56</sup>. However, most of these simply added general comments without identifying specific inconsistencies or contradictions.

The fourth set of questions asked **whether**, in the respondents' views, **there were inconsistencies between the motor vehicle block exemption rules and other existing or upcoming Commission instruments in the area of competition policy and enforcement**.

39 respondents believed that there were no inconsistencies or contradictions. By contrast, 11 respondents considered that there were some inconsistencies or contradictions<sup>57</sup>. The latter mentioned that in the context of qualitative selective distribution, if manufacturers refused access to the network to repairers that fulfil the selective network criteria, courts and national authorities generally ruled in favour of the repairers, based on the notion of contractual freedom. This allegedly gave rise to legal uncertainty. A few respondents referred to the risk that VMs would close the OBD port with reference to cybersecurity provisions in UNECE 115-116, but in contradiction with the TAR. A couple of respondents argued that the block exemption regulations should be more geared towards "private enforcement" in the B2B area in the future. This would be particularly important with regard to the question of the burden of proof. Finally, another respondent called on the Commission to ensure consistency with the proposed new competition tool. According to this respondent, the Commission should also ensure consistency with its aims to make the most of the data economy and data spaces, especially in ensuring innovation and growth in the aftermarket.

In the last question of this set, respondents were asked **whether**, to the best of their knowledge, **there were any inconsistencies between the motor vehicle block exemption rules and other existing or upcoming EU rules**.

23 respondents replied "yes", whereas 35 answered in the negative. Some of the respondents in the latter group referred to the TAR and stated that although the new TAR contains provisions on the access to repair and maintenance information, the description of technical information in the MVBER is by its very nature more "fluid", to take account of technical progress. The MVBER should therefore emphasize that the notion of technical information should not be strictly limited to the lists of examples provided in the TAR. This would help independent operators to access and use state-of-the-art technical information. Some other respondents also said that the motor vehicle block exemption rules should be updated according to new provisions on vehicle technical information included in the TAR, such as recitals 50, 51 and 52.

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<sup>54</sup> Primarily associations representing vehicle dealers or VMs, but also other stakeholders belonging to various categories.

<sup>55</sup> Primarily associations representing parts dealer, but also independent undertakings (mainly parts dealers).

<sup>56</sup> A number of comments did not refer to identifiable inconsistencies or contradictions and, therefore, have been omitted here.

<sup>57</sup> Primarily associations representing vehicles dealers or vehicle importers.

Some other comments concerned in-vehicle data. In particular, a respondent argued that in the recitals of the MVBBER there could be a reference to upcoming regulations on access to in-vehicle data. Another respondent was concerned to avoid inconsistencies or contradictions with future European rules on this matter, so as to ensure free and competitive access to data for all actors involved. The MVBBER should be consistent with the aims of the Commission in relation to the data economy, the data strategy and Data Governance Act.

Finally, some respondents referred to the UNECE regulations. One indicated that the integration of UNECE regulations 155 and 156 via Regulation (EU) 2019/2144 is going to have an impact on the overall regulatory framework, and that potential issues of conflict required additional consideration. A few raised the risk that VMs would use the UNECE regulations as an excuse to block access to in-vehicle data via the OBD port. Another respondent mentioned that in the draft of the delegated legal act on the TAR and Annex X - Diagnosis, access to information relevant to repairs is apparently reduced to safety- and environmentally-relevant systems. Some respondents argue that this formulation is misleading and could be misused to exclude competition from independent market participants. Therefore, these respondents argued, special attention should be paid to ensuring that the provisions of the MVBBER regime are not undermined this way.

### ***2.5. EU added value (Could the same results have been achieved with action at national level?)***

The first set of questions in this section asked respondents to indicate **whether**, in their experience, **the motor vehicle block exemption rules (namely the VBER, the MVBBER, the VGL and the SGL) had made it easier for national competition authorities (“NCAs”) and national courts to apply the rules consistently.**

The large majority of respondents (59) replied “yes” to the above question, while some (15) concluded the opposite. Some of the arguments raised by those responding in the negative concerned enforcement. In this vein, it was noted that although, in general, the MVBBER had given clear guidance and made it easier for NCAs to apply the rules, the Commission should have an active role in enforcing the current rules. Some respondents considered that for some topics, the absence of cases at EU level made it difficult for market players and Member States to apply the rules coherently. Some respondents maintained that in certain Member States, NCAs did not seem to apply the MVBBER rules. It was also claimed that national courts did not take proper notice of the MVBBER and especially not of the SGL. Some respondents pointed to diverging rulings of the European Court of Justice and decisions of NCAs (an example given was the recent decision by the German Federal Cartel Office<sup>58</sup> regarding provisions within selective distribution agreements that prohibited distributors from selling products via third-party platforms). Finally, some respondents flagged that as a result of the removal of the specific provisions for dealers from the MVBBER, some Member States had adopted specific provisions on this. This may lead to fragmentation on rules across Member States as some national regimes may

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<sup>58</sup> German Competition Authority, Intersport, Press release, 25 June 2020.

be more extensive than others. Finally, a respondent claim for clearer definitions of original parts and parts of matching quality, emphasizing that the latter are the same quality as original parts. That way VMs/authorised dealers would be unable to make claims in relation to the spare parts (e.g., glass) supplied by the aftermarket.

The second set of questions enquired **whether**, in the experience of the respondents, **the motor vehicle block exemption rules had provided added value**, or whether national guidance, the enforcement practice of NCAs and relevant national case-law could have been equally or more effective.

A large majority of respondents (64) considered that national provisions would have been less effective. Only a few respondents considered that national provisions would have been equally effective (2)<sup>59</sup> or more effective (2)<sup>60</sup>. One of the two respondents considering that national rules would have been more effective argued that local rules could have been adopted to require make VMs' market access conditional on giving access to technical information to independent operators within a given Member State. One of the respondents stating that national rules would have been equally effective explained that since the transfer of the exemption for motor vehicles to the VBER in 2013, the conditions for exemption relating to contractual standards for dealerships had been transferred to national provisions in the respondent's Member State. The respondent indicated that this had been welcomed at dealer and repairer level. However, the EU provisions in the MBVER framework make sense within their scope and should also be extended further.

## ***2.6. Final comments***

To conclude the questionnaire, respondents were asked whether they had **anything else to say that might be relevant for the evaluation of the motor vehicle block exemption rules (namely the VBER, the MVBBER, the VGL and the SGL)**.

Most respondents reiterated the main points of their position. Many stakeholders referred to the need to address access to in-vehicle-data (and some mentioned that consumers should be able to decide to whom this data goes) and to the fact that access to technical information should continue or be reinforced. Dealers referred to their wish to see contractual protection (including by limiting direct sales by OEMs to end users and by dealing with franchise-like contractual relationships in the MVBBER and VBER). Some respondents reiterated the need for better enforcement of the MVBBER (adapted to SMEs) and flagged that in some Member States the standard of proof required by courts for bringing a case against VMs was very high (e.g., in the Netherlands). One respondent wished to see the introduction of an EU regulation against the "abuse of economic dependence" in vertical relationships. Finally, a couple of respondents active in the insurance sector mentioned that the questionnaire did not explicitly take account of insurers (which are also indirect consumers of spare parts).

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<sup>59</sup> A business association representing vehicle dealers and an employee/consumer organization.

<sup>60</sup> A trade organization and a repairer.