

**Synopsis report of the contributions received during  
the stakeholder consultation and the call for evidence on the proposed prolongation of  
the Motor Vehicle Block Exemption Regulation and the proposed amendments to the  
Supplementary Guidelines**

In view of the expiry of the Motor Vehicle Block Exemption Regulation (EU) No 461/2010<sup>1</sup> ("MVBBER") on 31 May 2023, and following an evaluation<sup>2</sup> of the functioning of the motor vehicle block exemption rules,<sup>3</sup> the European Commission ("the Commission") revised the existing rules and prepared a draft Regulation prolonging the validity of the MVBBER for five additional years (until 31 May 2028) and a draft Communication introducing targeted updates to the Supplementary Guidelines<sup>4</sup> ("SGL"). The proposed extension and draft amendments were subject to a stakeholder consultation<sup>5</sup> and a call for evidence<sup>6</sup> that ran from 6 July 2022 to 30 September 2022.

The draft rules were published in all of the 24 official languages of the EU and stakeholders were invited to provide feedback in any of those EU languages. The consultation activities were published on the EU portal "Have your Say" and on DG Competition's website, and were promoted via Twitter and LinkedIn.

In total, the Commission received 46 contributions, some of which included joint feedback from several stakeholders. Contributions were submitted by email and/or via the online tool available on the EU portal "Have Your Say".

The statistics computed in this summary are only based on the 46 contributions submitted in the context of the stakeholder consultation and the call for evidence.<sup>7</sup> The contributions received (and this summary) cannot be regarded as the official position of the Commission and its services and, thus, do not bind the Commission.

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<sup>1</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>2</sup> Evaluation Report (COM(2021)264) and Staff Working Document (SWD(2021)112) on the findings of the evaluation are available [here](#).

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

<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> Details accessible [here](#).

<sup>6</sup> Details accessible [here](#).

<sup>7</sup> The Commission received some additional position papers outside the framework of the stakeholder consultation and call for evidence (e.g., after the official deadline had expired). These contributions are not part of the present summary. The Commission will nevertheless take them into consideration to inform its revision of the motor vehicle block exemption rules.

## 1. Profile of respondents

Among the 46 respondents to the stakeholder consultation and call for evidence, there were 32 business associations; seven companies/business organizations; two insurance federations/associations; two public entities; one academic/research institution; one consumer association and one EU citizen. The majority of the contributions were submitted in English.<sup>8</sup>

Table 1 below shows the geographic origin of respondents.<sup>9</sup>

| <u>Country</u> | <u>Count</u> |
|----------------|--------------|
| Belgium        | 9            |
| France         | 9            |
| Germany        | 8            |
| Spain          | 4            |
| UK             | 3            |
| Austria        | 3            |
| Netherlands    | 2            |
| Denmark        | 2            |
| Italy          | 1            |
| Sweden         | 1            |
| Switzerland    | 1            |
| Finland        | 1            |
| Hungary        | 1            |
| Poland         | 1            |

*Table 1- Distribution of stakeholders across countries*

32 respondents contributed on behalf of business associations. These included associations representing parts/components manufacturers and/or distributors; vehicle repairers; vehicle leasing companies; vehicle manufacturers (VMs) and/or dealers; and vehicle data publishers. The associations representing aftermarket operators, such as parts manufacturers, vehicle dealers and vehicle repairers, acted on behalf of independent operators, the authorized repair network or both.

Of the seven respondents that contributed on behalf of companies/business organizations, five are active in the aftermarket. Of the remaining two respondents, one operates as a VM and another as a law firm on their own account.

The remaining stakeholders are two public entities; two insurance federations/associations; one consumer organization; one academic institution; and one individual.

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<sup>8</sup> Some contributions were submitted in German (8), French (7), Finnish (1), Spanish (1), Italian (1) and Swedish (1).

<sup>9</sup> It should be noted that most of the respondents that have their headquarters in Belgium are associations of European scope.

## **2. Contributions**

The stakeholder consultation and the call for evidence sought stakeholders' views on two key points: (i) the proposed extension of the validity of the MVBBER; and (ii) the proposed amendments to the SGL.

As the content of this summary is not the result of a large-scale survey but only of the contributions received, statistics regarding number of stakeholders supporting a particular view may not be representative of the actual views of all market operators.

### ***2.1. Draft Regulation amending the MVBBER***

#### ***2.1.1. Overview of the proposed changes***

In its draft Regulation amending the MVBBER, the Commission proposed to amend: (i) Article 8 of the MVBBER (Period of validity) to prolong the validity of the MVBBER for a period of five years (i.e. until 31 May 2028); and (ii) Article 7 of the MVBBER (Monitoring and evaluation report) to introduce a renewed obligation to monitor and evaluate the MVBBER before its new expiration date.

#### ***2.1.2. Feedback on the proposed amendments***

##### ***2.1.2.1. Overview***

The **majority of respondents supported the proposed five-year extension**. While some expressed agreement without adding extra remarks,<sup>10</sup> others were either not entirely satisfied with the proposed length of the extension or were critical of the proposal to extend the MVBBER without immediate further changes to it.<sup>11</sup>

##### ***2.1.2.2. Comments regarding the provisions of the Draft Regulation***

Only a few respondents made specific comments on the announced duration of the extension. Two of them regarded five years as too short and argued that a longer duration would be appropriate for reasons of legal certainty.<sup>12</sup> Some stakeholders representing aftermarket operators criticized the proposed evaluation date (i.e. by the new expiry date of the MVBBER) and advocated for conducting an evaluation of the regime earlier (e.g. by 2024,<sup>13</sup> by 31 May 2026<sup>14</sup> or by 31 May 2027<sup>15</sup>), in order to react more quickly to the ongoing changes and the increasing digitalization in the sector.

A few stakeholders pointed to other issues that they felt the Commission should have taken into account when revising the motor vehicle block exemption rules. For example, a limited number of stakeholders called for extending the **scope of the MVBBER** to include all motor vehicles intended for use

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<sup>10</sup> Among them associations representing parts suppliers, VMs and vehicle repairers, as well as an automotive federation.

<sup>11</sup> Primarily associations representing the automotive aftermarket.

<sup>12</sup> An academic institution and an association representing OEMs.

<sup>13</sup> An association of vehicle dealers and repairers.

<sup>14</sup> An association of vehicle dealers and repairers.

<sup>15</sup> Associations of vehicle dealers and repairers; and an automotive federation.

on public roads and off-road<sup>16</sup> or to specific vehicles, such as heavy machinery and tractors<sup>17</sup> or motorcycles.<sup>18</sup>

## **2.2. Draft Communication amending the SGL**

### **2.2.1. Overview of the proposed changes**

Following the evaluation of the rules, in its draft Communication, the Commission proposed to extend the principles already in place for the provision of technical information, tools and training, so that they explicitly cover vehicle-generated data which is necessary for the provision of repair and maintenance services. To this effect, the draft Communication refers to technical information, tools, training, **and vehicle-generated data** as inputs that are potentially essential for repair and maintenance.

In addition to the data-related changes, the draft Communication proposed updates to bring the SGL in line with the new General Vertical Block Exemption Regulation<sup>19</sup> (“new VBER”) and the new Guidelines on Vertical Restraints<sup>20</sup> (“new VGL”).

### **2.2.2. Feedback on the proposed amendments**

The participating **stakeholders generally welcomed the inclusion of vehicle-generated data into the SGL**. However, a few respondents would have preferred the clarifications on access to vehicle-generated data to be introduced also in the MVBER instead of only in the SGL.<sup>21</sup> A number of stakeholders made **further suggestions** to the draft Communication amending the SGL, calling for further clarification of some of the newly included provisions.

#### 2.2.2.1. Comments regarding “essential inputs” and “vehicle-generated data”

Several respondents commented on the reference to technical information, tools and training, and vehicle-generated data as potential **essential inputs** for repair and maintenance as well as on the concept of “**vehicle-generated data**”. In particular:

- Several of the participating business associations, representing both independent and authorized operators, as well as a parts supplier showed concerns about the proposal to add the term “**essential**” in paragraphs 60, 62, 63, 67a, and 68 of the SGL. They suggested to either delete it,<sup>22</sup> replace it by “relevant”,<sup>23</sup> “necessary”<sup>24</sup> or by the word “needed”.<sup>25</sup> In this regard, many

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<sup>16</sup> Association of manufacturers of components.

<sup>17</sup> Individual.

<sup>18</sup> Associations representing vehicle repairers.

<sup>19</sup> Commission Regulation (EU) 2022/720 of 10 May 2022 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 134, 11.5.2022, p. 4 - 13.

<sup>20</sup> Communication from the Commission – Commission Notice – Guidelines on vertical restraints. OJ C 248, 30.06.2022, p.1 - 85.

<sup>21</sup> An association representing components manufacturers, an association representing insurers and an automobile club.

<sup>22</sup> Associations representing parts suppliers and repairers; and a company active in the vehicle repair market.

<sup>23</sup> Associations representing parts suppliers, automotive data publishers and vehicle repairers; and a company active in parts supply.

stakeholders claimed that the term “essential” might be misleading in the context of Article 101 TFEU, as they saw it as a term specific to abusive behavior under Article 102 TFEU.

- A couple of stakeholders further suggested to avoid adding the term “**potentially**” in paragraph 63 of the SGL as, in their view, such a term could lead to uncertainty.<sup>26</sup>
- Many respondents, belonging to different types of stakeholder groups, expressed concerns about the **lack of a definition** for “vehicle-generated data” in the SGL.<sup>27</sup> Some suggested to include in the SGL a **non-exhaustive list of examples** of what would constitute vehicle-generated data.<sup>28</sup> Some others pointed out that, in contrast to the position as regards technical information, the Type Approval Regulation<sup>29</sup> do not (yet) provide for specific rules on access to vehicle-generated data and do not contain a list of examples of the data points that would be considered as such. They called on the Commission to take this point into account in the context of its proposed amendments to the motor vehicle block exemption rules.
- Some stakeholders also put forward that the SGL should explicitly state that Article 101 TFEU can also cover **indirect ways of hindering or discriminating access** to “essential inputs”.<sup>30</sup>

#### 2.2.2.2. Comments on paragraph 62a of the draft amended SGL

As for paragraph 62a of the draft amended SGL, which sets out a number of criteria that should be taken into account when assessing whether withholding a particular item might cause an agreement to be caught by Article 101 TFEU:

- Some stakeholders did not find the text to be sufficiently clear on whether the criteria of paragraph 62a of the draft amended SGL were **cumulative or alternative**.<sup>31</sup>
- Several stakeholders, particularly representatives of independent aftermarket operators, expressed **concerns about using data provided by VMs to authorized repairers as the benchmark** for giving access to data to independent operators (see paragraph 62a(b) of the draft amended SGL). These

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<sup>24</sup> Associations representing vehicle dealers.

<sup>25</sup> Associations representing vehicle dealers and repairers.

<sup>26</sup> Primarily associations representing parts suppliers, vehicle dealers and repairers; and a company active in parts supply.

<sup>27</sup> Associations representing VMs, vehicle dealers, repairers and parts suppliers; an academic institution and a law firm.

<sup>28</sup> Associations representing vehicle dealers, repairers, and parts suppliers; and a company active in parts supply.

<sup>29</sup> Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 on the approval and market surveillance of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles, amending Regulations (EC) No 715/2007 and (EC) No 595/2009 and repealing Directive 2007/46/EC. OJ L 151, 14.6.2018, p. 1–218. The draft Communication amending the SGL refers to the Type Approval Regulation as a guide to assess cases of suspected withholding of technical information and to assess whether vehicle-generated data constitutes an essential input for repair and maintenance activities (see paragraphs 65 and 67a of draft amended SGL).

<sup>30</sup> Companies active in parts supply and vehicle repair services; an association representing vehicle repairers and dealers.

<sup>31</sup> Associations representing vehicle repairers and dealers; and a public entity.

stakeholders emphasized the different and specific access needs of companies at different levels of the repair and spare parts aftermarket and advocated for unrestricted access to all data to which the VMs have access.<sup>32</sup> A participating VM argued that VMs should only be required to give access to data that they already possessed and not to data that would need to be produced specifically for other aftermarket operators.

### 2.2.2.3. Other feedback on the proposed amendments

In addition to the specific feedback described above:

- Some stakeholders, one being an automotive data publishers' association, requested clarity regarding **data publishers**.<sup>33</sup> These stakeholders suggested adding "publishers of vehicle-generated data" as one of the "independent operators" mentioned in paragraph 62 of the draft amended SGL. They pointed out that these operators also need access to technical information and vehicle-generated data, but, as they are on a different level of the value chain, they need it in a different form to that required by independent repairers.
- A few respondents also requested to add "**distributors of repair equipment and tools**" to the list of "independent operators" of paragraph 62 of the draft amended SGL.
- Some stakeholders, including the participating consumer organization, also argued that the motor vehicle block exemption rules should ensure that any data sharing was compatible with **data protection requirements**.
- Lastly, as to the proposed amendments to align the SGL to the new VBER and new VGL, some respondents advocated for further guidance to be included in the SGL on aspects covered by the new VBER and new VGL, namely, **agency agreements** and **exchange of information in dual distribution** in the automotive sector.

### 2.3. General feedback on the revision

In addition to the specific feedback on the draft amendments to the MVBBER and SGL, many stakeholders pointed to other issues that they felt the Commission should have taken into account when revising the motor vehicle block exemption rules.

Some examples of this type of comments are as follows:

- A few respondents explained that, in their view, the **market definition** provisions of the SGL required some updating.<sup>34</sup>
- Some respondents argued that the revision should have addressed the issue of VMs **not allowing certain candidate repairers into their networks**, even though these meet the qualitative selective

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<sup>32</sup> Primarily associations representing the aftermarket and companies active therein.

<sup>33</sup> Associations representing parts suppliers and automotive data publishers.

<sup>34</sup> An academic institution and a law firm.

criteria.<sup>35</sup> Some business associations representing the independent aftermarket even suggested that such restrictions should be included in the hardcore restrictions of Article 5 of the MVBBER.<sup>36</sup>

- Many respondents mentioned that VMs continue to **misuse warranties** and misinform consumers that their warranty is conditional on repair at certain workshops.<sup>37</sup> They asked the Commission to expand the guidance on warranties in the SGL.
- Some stakeholders highlighted that **restrictions on spare parts** continue to exist.<sup>38</sup> According to these respondents, the Commission should address the fact that these parts are increasingly becoming **captive** to the VMs.<sup>39</sup> With regard to **tooling restrictions**, many respondents suggested to introduce fair principles for appropriate licensing fees, e.g. by requiring VMs to abide by FRAND principles.<sup>40</sup>
- In the context of restricting access to spare parts for repair purposes, stakeholders from the independent aftermarket submitted that non-authorized repairers are often not provided with the relevant **activation codes** needed for repair,<sup>41</sup> or that once the repair has been made, they cannot switch off the error alert that appears on the dashboard of the vehicle.<sup>42</sup> Several respondents also argued that the SGL should be amended to include further examples of what can constitute technical information and explicitly refer to information needed to work on **“Advanced Driver Assistance Systems” (ADAS) and EV battery management systems**, as repairers often need this to carry out their work.<sup>43</sup>
- Stakeholders from the aftermarket segment warned against the misuse of **cybersecurity measures** to restrict the access of the independent aftermarket to data necessary for vehicle repair.

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<sup>35</sup> Associations representing vehicle repairers and dealers; and an automotive federation.

<sup>36</sup> Associations representing vehicle dealers and repairers; and an academic institution.

<sup>37</sup> A consumers association; companies active in repair services and parts supply; associations representing manufacturers of components and automotive data publishers; and an automotive federation.

<sup>38</sup> Primarily associations representing vehicle dealers, parts suppliers and automotive data publishers; and a company active in vehicle repair services.

<sup>39</sup> Primarily associations representing parts suppliers and companies active in parts supply.

<sup>40</sup> Companies active in parts supply and an association representing parts suppliers.

<sup>41</sup> A company active in parts supply and an association representing parts suppliers.

<sup>42</sup> Automotive federations.

<sup>43</sup> Associations representing parts suppliers, vehicle repairers and automotive data publishers; and companies active in vehicle repair and parts supply.