



**Leaseurope Position
on the Evaluation Report on the Operation of the
Automotive Block Exemption Regulation (EC No 1400/2002)**

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About Leaseurope

Leaseurope, the European Federation of Leasing Company Associations, is composed of 46 Member Associations in 34 countries. It represents as an umbrella body the European leasing and automotive rental industries. Its leasing members account for **92% of the European leasing market.** In April 2006, the Federation integrated short and long term car and truck renters into its membership base. It now represents around **8500 companies** across Europe employing over 200 000 people. During the course of 2007, the companies represented via Leaseurope financed in excess of 340 billion euros of new investments in vehicles, equipment and real estate with the portfolio of leasing contracts reaching more than 733 billion euros. Through its members, Leaseurope represents a total of **16.7 million vehicles on European roads.**

This position paper is fully supported by the British Vehicle Rental and Leasing Association (BVRLA), whose Members own and operate 2.6 million vehicles throughout the United Kingdom.

Introduction

As also the Commission's Report recognizes, vehicle leasing and rental is a valuable alternative to ownership to satisfy the mobility needs of individuals whether it is private consumers or businesses.¹ The leasing and rental industry is an important partner and contributor to forcing competition in the automotive sector. Out of the 16.7 million vehicles Leaseurope represents, 7.6 million were financed/purchased in 2007. In terms of penetration, Leaseurope represented as much as 34% of all new passenger car registrations in 2007 (6.1 million).

The importance of efficient competition in the motor vehicle distribution and servicing sector to the leasing and rental industry can be illustrated through the industry's TCO (total cost of ownership) approach. The TCO approach means that all costs related to a given car have to be taken into account in order to know the actual cost of the said car. This approach is widely used by leasing and rental companies and constitutes a core virtue of their business model. The cost of repair and maintenance services matters just as much as the price of a car. Hence, any changes in the motor vehicle sales and servicing market will have a direct impact on the vehicle leasing and rental industry. It is therefore of essence to our industry that we are involved and taken account of in the review of the Automotive Block Exemption Regulation EC No 1400/2002 (hereafter "BER"). In this context, we regret that Leaseurope was not consulted in DG COMP's fact-finding exercise in mid-2007. At the same time, we welcome the opportunity to comment on the findings of the Commission's Report on the operation of the BER.

This document is structured in three parts. In the first part, general observations about the Report are presented. The second part is the core part, as it outlines Leaseurope's position on two main issues: the end user status of leasing companies and the importance of ensuring competition between authorized and independent repairers. The third part contains Leaseurope's comments on some other BER objectives and whether they have been achieved from the perspective of the leasing and rental industries.

I. General observations about the Report

Leaseurope would like to put forward the following general observations:

- The Report is making reference to the so-called Umbrella Block Exemption Regulation (EC No 2790/1999), a legislation that will expire in 2010 and the follow up of which is still to be clearly defined. Therefore, it is difficult to judge how efficient this legislation would be as a substitute of the BER.
- At times conclusions in the Report are based on the number of legal proceedings launched. Particularly in the automotive sector, where businesses are

¹ The leasing industry has traditionally served as a partner of big and medium sized companies in their fleet management. The recent trend for this industry is to cater more and more for small-sized businesses and self-employed customers.

- interdependent, legal action is the last resort in the case of a dispute. Hence, the number of legal proceedings is not necessarily a good indication of the operation of the BER.
- The Report mentions the importance of the leasing industry but does not refer to Article 1(1)(w), despite this Article being crucial for the leasing and rental industry.

II. Leaseurope position on the BER

In the context of the review of the BER, Leaseurope, as the representative body of the leasing and automotive rental industries in Europe, would like to bring two points to the Commission's attention: the definition of the end user status of leasing companies and the need for ensuring competition between authorized and independent repairers.

1. End user status of leasing companies

a) Why are leasing and rental companies end users?

With a multitude of definitions existing in local accounting and fiscal legislations, and in some cases within specific local legislative frameworks for leasing, the only common definition of a lease that can be given on the European level is that provided by IAS17, the international accounting standard for leases, where a lease is defined as "an agreement whereby the lessor conveys to the lessee, in return for a payment or series of payments, the right to use an asset for an agreed period of time". **Vehicle leasing and rental companies are the legal economic owner of their fleet and assume the financial risk and other operational risks that are associated with vehicle ownership and hence are rightfully to be considered as end users.**

One of the main risks associated with car ownership is the risk related to the future value of the car. For many companies, outsourcing such risk is particularly interesting, as they no longer have to worry about the price at which they would be able to sell their cars on the secondhand market. In many types of leasing and rental contracts, the lessor fully takes over the residual value risk (which is defined as the risk relating to the uncertainty of the value of the physical asset at the end of the contract). This is one of the reasons why leasing and rental constitutes an attractive option for companies for which managing a fleet is not a core business.

The role of leasing companies is not simply about providing funding; in more and more cases the lessor is seen as an impartial expert that can provide a range of services. Leasing companies help customers define fleet policies that enable them to meet a variety of business objectives which can range from purely financial considerations, encompass operational efficiency and include developments related to the environment and driver safety. Leasing companies are in effect in control of vehicle selection policy and the management of relationships with the manufacturer. Leasing companies are often involved in the management of fuel consumption as part of the overall management of

the vehicle. This link is crucial in limiting vehicle emissions during its operational life. Leasing companies take a proactive approach to the development of environmental policy working with customers to help drive improvements in the environmental performance of the vehicle fleet. As this sector develops, leasing companies will also assume a central role in the development of wider mobility solutions.

It is important that the Commission understands that leasing companies are by no means disguised independent resellers. Leasing companies do not sell their vehicles to their customers, as the customers do not acquire ownership of the vehicle. A vehicle is merely made available to the customer for use throughout the duration of a contract in return for a series of payments. According to Leaseurope statistics, a vast majority of leasing contracts is concluded for a duration of 2-5 years.² After the expiry of the contract, the vehicle is no longer considered a new car and the BER does not apply.

b) Importance of the end user status in the BER

While we understand the Commission's strive for better regulation and avoiding over-regulation, Leaseurope urges the Commission to carefully consider the impact that not renewing the Regulation or removing some of its clauses may have on all stakeholders.

For the leasing and rental industries, Article 1(1)(w) of the BER is of extreme importance, as it clearly recognizes the end user status of leasing companies. Leaseurope's attention was brought to several cases in different European countries when suppliers attempted to dilute the end user status of leasing companies by insisting on the compulsory provision of customer or driver details, which amounts to an indirect restriction on sales and a serious restriction of competition. Since the 2002 BER has been in effect, many leasing companies and national associations of leasing and rental companies have managed to challenge and stop such suppliers' behaviour by referring to Article 1(1)(w). **Removing such a clause would be a step back in reinforcing competition on the vehicle distribution market. We also fear that the lack of legislative clarity of the end user status could lead to a restriction of leasing and rental companies' legitimate activities and put them at a commercial disadvantage in comparison with manufacturer captive financial companies.** The concept of end

²From Leaseurope's statistics for 2007, 74% of all equipment, including vehicle, contracts granted by Leaseurope's members are for a duration of 2-5 years (increase by 12% from 2006). Only 8.5% of all equipment, including vehicle, contracts granted by Leaseurope's members are for a duration of up to and including 2 years (decrease by 9% from 2006) and 14% of all equipment, including vehicles, contracts granted by Leaseurope's members are for a duration of 5-10 years (growth by 15% from 2006). The rest is concluded for contracts longer than 10 years. The share of passenger cars in the total of Leaseurope members' portfolio is 36%.

user, as included in the BER, is a legitimate recognition and a prerequisite for the effective functioning of the vehicle leasing and rental industries.³

c) Legislative options

The Umbrella Block Exemption Regulation (EC No 2790/1999) does not contain a clause equivalent to Article 1(1)(w) of the BER. The guidelines of the Umbrella Block Exemption Regulation only have a brief mention of the end user status that could be considered applicable to leasing and rental companies in #53 (“end users, whether professional end users or final consumers”). Nevertheless such ‘Guidelines’ only represent the Commission’s views and have no legally binding force.

Therefore, Leaseurope insists that Article 1(1)(w) of the BER is maintained and is strongly against moving such clause to ‘Guidelines’.

2. BER objective: Ensure competition between authorized and independent repairers

a) The importance of this objective to the leasing and rental industries

As for all end users, competition in the market for the provision of after-sales services is of great importance also for the leasing and rental industries. Many leasing and rental companies offer their customers maintenance and repair services that are often of better value and/or more comprehensive (such as full coverage of breakdown and preventive maintenance throughout the entire length of the contract) than those offered by the supplier of the vehicle. The reason for this is that leasing and rental companies “shop around” for the best value maintenance and repair services for their customers. In order for leasing and rental companies to be able to have a choice in the after-sales services market, reinforced competition between authorized and independent repairers is essential.

b) Evaluation from the leasing and rental industries’ perspective

Independent repairers are a valuable source of competition on the after-sales services market and thus contribute to lower prices. More importantly, increased competition between players leads to more choice and better quality services across the EU. Ensuring that independent repairers are able to compete with the manufacturers’ networks of authorized repairers was one of the objectives of the BER. Hence, the EC adopted provisions in the BER, the aim of which was to ensure that suppliers give independent repairers unencumbered access to technical information. The BER also helped clarify that authorized repairers shall supply spare parts to their independent competitors.

³ On page 3 of the Report, the Commission recognizes the importance of direct sales by manufacturers to vehicle leasing and rental companies: “Competitive pressure is further sustained by direct selling by vehicle manufacturers to leasing companies and other “fleet buyers”.”

The existing BER has, however, not provided adequate protection for the independent sector. The Commission acknowledges that there has been contraction in this sector, which is true. However, it is not clear that this development alone leaves the remaining “large groups” in a better position to compete; this sector of the market will require continued support and protection if it is not to contract further or disappear completely.

The independent sector must have access to technical information and technical training to allow them to compete effectively. This sector is a valuable source of service for leasing and rental companies, loss of this sector would increase repair costs across the board. Manufacturer restrictions should not be allowed to slow the dissemination of technical information as a repairer could be put out of business in a relatively short time. While Euro 5 and 6 oblige manufacturers to release data, this must be in a timely fashion and be accompanied by appropriate training.

c) Legislative options

For reasons explained above, it is of interest to leasing and rental companies that a solid competitive framework for ensuring competition between authorized and independent repairers is in place. However, Leaseurope, as the representative body of the leasing and automotive rental industries, does not consider itself competent to judge which competitive framework is best suited to achieve this purpose. Instead, we encourage the Commission to thoroughly consult representatives of the repairers’ industry and gather their views on the future working of the BER for this purpose.

III. Leaseurope comments on other BER objectives

In addition to the two points developed above, Leaseurope would like to put forward a few brief observations on the following two objectives of the BER and whether they have been achieved.

BER Objective: Facilitating cross-border trade in motor vehicles

The Report states that cross-border sales have improved, barriers have been eliminated and prices across countries have converged. While this may be true for the private customer, Leaseurope observes that it is still not the case in the B2B (business to business) segment. Leasing and rental companies continue to face barriers to purchasing cars across borders and buying cars on the international scale (within EU) is still problematic.

BER Objective: Reinforcing competition between dealers of the same brand by encouraging diversity in distribution formats

The BER has done little to promote innovation in distribution and in many respects has given the manufacturers increased control. The ability to buy any car and have any car

serviced at a dealer, which is very important especially to the international players in the leasing and rental industry, should still be encouraged.

Also, as the Report notes, the number of main dealer locations has decreased from 2002 to 2006, as a result of which customers have to travel longer distances to dealers. An increase in the number of authorized dealers should be encouraged, thereby improving proximity to customers.

Conclusion

The leasing and rental industries play an important role in increasing competition on the vehicle sales and distribution market. In order for our industry to continue to help sustain competitive pressure on the market, Leaseurope emphasizes two aspects that the Commission should consider in the context of the review of the BER. Firstly, it is imperative that the end user status of leasing and rental companies is clearly defined in the successor to the BER and that Article 1(1)(w) of the BER is maintained. The lack of legal guarantee of the end user status could lead to a restriction of leasing and rental companies' legitimate activities. Secondly, assuring efficient competition between independent and authorized repairers, such as by guaranteeing independents' access to technical information and technical training, should remain a key priority for the Commission.

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