

Motor Vehicle Block Exemption Regulation European Commission open public consultation

Summary of main asks

- Enforcement of the end user status (to be enshrined in the MVBBER text, not in the Guidelines)
- Prevent restrictions on sales channels
- Spare parts availability
- Vehicle repair and warranty rights
- Accessing vehicle data with no disproportionate cost/technical hindrances
- Widening the scope to two-wheelers

Competition in new motor vehicle distribution

From the leasing and rental companies perspective, the **end user status** is the backbone for an effective functioning of our industry and a prerequisite for competition in this market. Nevertheless, a number of vehicle suppliers have persistently refused to acknowledge leasing companies' end user status, trying to prevent them from obtaining vehicles at competitive conditions, by linking the purchase of vehicles to specific requirements. Such practices consist for instance in:

▪ Not granting the same levels of discounts as to VMs' lessee:

leasing companies are still faced with purchasing discounts being used as a tool to apply pressure on them;

▪ Requirement to register/use the vehicle only in the country of purchase:

obliging the vehicles to be registered in the same country where such vehicle was purchased. Sometimes this is combined with an obligation for the vehicles to be used in that same country for a certain period.

▪ Compulsory requirement to disclose customer or drivers data:

requiring leasing companies to disclose their customers' identity in return for receiving rebates; requiring up-front direct contracting with the customer with leasing companies acting as an intermediary between the vehicle manufacturer and the customer (only limited to fleet management tasks);

The MVBBER and its guidelines clearly state that a car manufacturer cannot require leasing companies to provide "copies of each leasing agreement" nor can it establish any other requirement that would force leasing companies to disclose information on the terms and conditions of the leasing contract and the identity of the lessee, as a condition for the acquisition of a vehicle. Such practices amount to an indirect restriction on sales and hence a serious restriction of competition.

Factors affecting the intensity of competition in new motor vehicle distribution

Mergers between market players is the first factor affecting the intensity of competition with recent consolidation in the industry and some brands exiting Europe. For example, PSA have acquired Opel and Chevrolet has exited Europe. The removal of Chevrolet saw >500k units taken out of the market. Combined with the decline in sales at Opel, since PSA took control, these 2 brands total nearly 1m less vehicles in the market. The net result is less competition. This trend is continuing with the merger of PSA and FCA (especially in the LCV market). OEMs are also openly focusing on “pricing power” strategies, as a result of which purchase prices of vehicles are actually increasing.

At the same time, there has been a consolidation within the vehicle distribution network with dealerships turning into “mega dealer” Groups i.e. Emil Frey, Penske and AVAG have >1,000 dealer locations in Europe. We are also witnessing OEMs take more control of the sales channels and dealing directly with customers. In these examples, dealers are becoming “agents” and paid a fee for administering a customer order. The net result is less competition amongst dealers and subsequently a higher price paid by the customer. With the launch of EVs, most OEMS took direct control of the ordering i.e. TESLA, AUDI, VW, POLESTAR etc. dictating the level of discount/bonus granted to customers.

Along the same lines, OEMS are taking measures whereby dealers are instructed to respect the manufacturer’s price structure and forced not to sell a vehicle at a price considerably below the recommended retail price, either directly or through discounts, aiming at changing a dealer’s commercial behaviour.

Lastly, due to **technological options**, OEMs are more and more directly contacting drivers via connected vehicle opportunities. Whilst this may seem to lead to additional competition from the driver’s perspective, this will in the end push out the leasing companies.

Provision of repair and maintenance services

Our Members are also experiencing difficulties in terms of warranties. In Austria, we have found examples of captive workshops refusing to repair vehicles owned by independent leasing companies. Some members have also been informed that where service work would be carried out by independent service providers, the warranty would be voided. The same logic is applied in case of recall campaigns, where under warranty repairs are made contingent on a service history in a captive workshop.

In the UK, our Members were advised that genuine parts had to be used to maintain the manufacturer’s warranty.

In Finland, some OEMs/importers provide additional covers to keep the customers loyal (e.g. OEM's battery cover).

In Hungary we have been informed that OEM's are not openly refusing warranty repair requests but the captive workshop requires well documented proof on the repairs conducted outside of its own network:

- check list of investigated parts of vehicle
- conformity certification of used spare parts (and oil)
- warranty repair can be done only by OEM garages

- garage interactions (e.g. recalls) are not communicated to the owner (e.g. the leasing company) and this could cause large extra cost to us if the recall is not executed and the car breaks down.

In Italy, a specific OEM has a particular tool that detects the ADBLUE liquid used during maintenance job and it signals when this liquid does not comply with their parameters/prescriptions. This could invalidate the warranty when refilling occurs at a petrol station or an ISP garage.

Still on warranties, some of our members in the Netherlands are experiencing the fact that repair work is exclusively arranged by brand organization with independent Service providers being excluded. The same applies for recall events. Moreover, the assessment and granting of warranty by local importer happens based on the OEM own rules (maintenance at brand organization, origin of vehicle import, maintenance rules of importer or manufacturer, etc.). This problem is exacerbated with many new EV vehicles (but also ICE vehicles) where maintenance contract is included in the purchase price, with maintenance and coverage of costs being managed via the importer, exclusively for affiliated brand channel: crediting these costs is difficult and not transparent.

In Spain, in case of new electric vehicles, several OEM's requirements to perform a repair might be quite strict about isolating the vehicle from any electrical source. If the workshop is small it is not feasible to live up to this requirement.

Many problems are also experienced in the case of recalls/software updates.

Our French Members informed that some OEMs show protective behaviour in case of recall and/or software updates. If recall has a safety aspect the OEM will inform the leasing company and the recall service will happen under warranty. If it is not a safety related update/recall no proactive action is taken and the leasing company is not informed. An update will take place only when the vehicle is serviced at an OEM garage. In these cases, it might occur that updates are not performed since the vehicle is serviced in a non-OEM garage.

Also in the Netherlands, system updates are exclusive to brand organization.

In Sweden, certain OEMs are really pushing for updates to be done and claim that the vehicle is not as safe if they are not performed. They are making it hard for independent service providers (ISPs) to perform these updates by for example:

- Forcing the ISP to have a full year subscription in order to download the updates.
- Forcing the ISP to buy the complete update even if not needed.
- Charging the ISP a much higher price for the update compared to what they charge the OEM's.

Distribution of spare parts

It has been reported that in Sweden some OEMs are not allowing any other than their OEM branded garages to work on their cars by making it impossible to get a hold of spare parts. Still in Sweden, specific OEM dealers are telling our drivers that the car warranty for new cars is removed and not valid when we buy and install rims from independent wheel distributors. This is creating a mistrust in aftermarket rims.

In Belgium it has been reported that for a specific OEM, body repair shops are faced with the fact that they can only order parts at the OEM local dealers.

A similar problem is experienced by our Members in Germany where a specific OEM has limitations about the availability and order of spare parts for our service partners. It is difficult to communicate with them and parts must be picked up at their shops since they will not be delivered.

In the Netherlands, a specific OEM does not make parts freely available (both on service/maintenance and damage repair). Body repairs can only be performed by selected body repair shops. The OEM selected partners receive a 30% discount on parts (legal inequality), whereas they are not open to discuss service level agreements with leasing companies.

In Italy, our Members reported that a specific OEM does not provide the spare parts database, therefore the independent service providers network (both for maintenance and car repair) can't produce an estimate because they do not have the possibility to access that OEM spare parts list.

Concerns are also rising regarding whether independent garages do have multibrand tools with the right capabilities to read access codes for spare parts. QR codes or passwords are needed and this is done via the OEM system and not via the independent system.

Other elements on which the exemption should be made conditional

Leaseurope is of the opinion that the end user status for leasing companies and the protection that such status is supposed to give, should be added into the VBER and MVBBER itself, as at present it is only found in the supplementary guidelines (consideration 51). In this consideration it is provided that “[..], an obligation on a dealer to provide its supplier with copies of each leasing agreement before the dealer sells a motor vehicle to a leasing company could amount to an indirect restriction on sales.”

We note however that:

OEMs/ importers/ dealers still make their pricing (such discounts and bonuses schemes) conditional on the subsequent use of the vehicle by the leasing companies.

OEMs/ importers/ dealers apply the following practices: obliging the vehicles to be registered in the same country where such vehicle was purchased. Sometimes this is combined with an obligation for the vehicles to be used in that same country for a certain period; no bonuses are granted for vehicles that are purchased for private lease.

The conditionality to register (and use) the vehicles in the country of purchase are limiting leasing companies' opportunities to lease the vehicles outside the relevant territory. The obligation to notify customer or driver data clearly amount to sales restriction which are clearly prohibited (see Paragraph 50, Guidelines on Vertical Restraints which provide that these restrictions relate to market partitioning by territory or by customer group, which “[..] may also result from indirect measures aimed at inducing the distributor not to sell to such customers, such as refusal or reduction of bonuses or discounts [...]”. However, it is difficult for leasing companies to challenge this due to their dependency on the OEMs.

In our opinion these issues could only be solved if the end user status of leasing companies is maintained and the exemption is made conditional on the following (i) OEMs may not discriminate

between end-users, (ii) OEMs may not apply registration and use requirements, (iii) OEMs may not require retention periods for vehicles that limit intra-group sales, and (iv) purchasers of vehicles may not be obliged by OEMs to provide end customer names.

Other developments which will further strengthen OEMs positions are linked with OEMs start selling their vehicles directly online. Due to this new development, OEMs are circumventing the dealer network and taking back control to whom the vehicles are sold. OEMs do not allow leasing companies to purchase vehicles online, which puts them in a worse position compared to private customers.

In general, to meet people mobility needs, private lease may be a more affordable option for many rather than buy a car. Therefore, competition between independent leasing companies and OEMs should not be hampered. Whilst the market is highly affected by the current COVID-19 crisis, the European Commission is moving forward with the greening of the transport sector and leasing companies can play a key role in providing green mobility, for which an adequate regulatory framework should be in place.

Types of vertical restrictions that should be considered hardcore – Access to data

In Italy it is hard for the Independent Service Providers (ISP) Network to align data in the central control unit after battery replacement. Often, they need to bring the vehicle in at an OEM workshop which is an inconvenience and results in extra down time of the vehicle.

Another issue happens when resetting the warning/dashboard error coding lights software is needed which ISP do not have or are not allowed to purchase.

For a certain period, problems also occurred with the resetting of the warning/dashboard error coding lights even for regular services because the last version of software was encrypted.

Many leasing company's vehicles are equipped with a telematics device and some OEM authorized garages refuse to execute first vehicle diagnosis if the leasing company does not send the telematics provider a technician to temporary uninstall the device.

In the Netherlands, sharing technical vehicle data is also difficult. Every manufacturer, forced by legislation, has a data release program, however the costs / subscriptions required for this are exorbitantly high. Access to these systems is labor intensive and unnecessarily expensive for universal garage owners.

With regard to data and connectivity there is brand exclusivity and not accessible by fleet management companies. Customers are “forced” to agree to manufacturer's connectivity terms. If the lease driver does not agree, things such as a driver App and parking heater are not available. With this approach customers are directed to branded channel for maintenance.

In Poland some OEM brands require a certain system efficiency checklist for the inspection of all modules in a car. They also require that such a printout should have the mileage at which the test was performed. This causes the biggest problem, because the checklist provided by the ISP

service lacks the mileage data. Unfortunately, it is often written with a pen, which undermines the credibility of such a document.

Accessing vehicle data is not restricted on the Polish market, however the independent service providers do not use such data as it is too expensive to retrieve (having the right systems and tooling in place to collect data is costly).

In Spain, in some luxury cars, if a part is replaced (typically airbags, ADAS, etc.), the whole system sometimes needs to be recalibrated at an OEM dealer. It requires a two-stop service event which is not convenient for garage, the leasing company and ultimately the client.

In the UK our Member claims the issue faced when requiring a wiring diagram to rewire a brake pad warning lamp. This was refused by both the main agents of a specific OEM in Aberdeen and Sunderland. The centre had to rewire it without the diagram.

Still in the UK, some OEMs are blocking diagnostic testing or software updates at independent or fleet maintenance providers, which is an issue especially trucks.

Scope of the sector-specific regime for vertical agreements concerning motor vehicles

The scope of the sector-specific regime for vertical agreements concerning motor vehicles as defined in Regulation 461/2010 should be widened to include two-wheelers since motorcycles and electric bikes are increasingly being seen in the new mobility scene and are becoming an important part of our business.

About Leaseurope

Leaseurope brings together 46 member associations representing the leasing, long term and/or short term automotive rental industries in the 32 European countries in which they are present. The scope of products covered by Leaseurope members' ranges from hire purchase and finance leases to operating leases of all asset categories (automotive, equipment, machinery, ICT and real estate). It also includes the short term rental of cars, vans and trucks. It is estimated that Leaseurope represents over 90% of the European leasing market.

Asset finance and leasing markets have developed to respond to business investment and consumption needs as well as to accompany the development of local industrial production and distribution. The types of institutions represented by the Federation include specialised banks, bank-owned subsidiaries, the financing arms of manufacturers as well as other, independently-owned institutions.

In 2019, the leasing firms represented through Leaseurope's membership helped European businesses and other customers invest in assets that is estimated worth more than 407 billion EUR, reaching about 919 billion EUR of outstandings at the end of the year^[1]. Leasing is used by more European SMEs than any individual category of traditional bank lending taken altogether (around 43% of all European SMEs make use of leasing which is more than any other individual form of lending)^[2] and is also popular amongst larger corporates^[3]. Leasing is also useful to support the public sector (e.g. leasing to schools, hospitals, etc.).

Leaseurope is entered into the European Transparency Register of Interest Representatives with ID n° 430010622057-05.

More information at www.leaseurope.org

^[1] Leaseurope 2017 Annual Statistical Enquiry

^[2] Oxford Economics, *The Use of Leasing Amongst European SMEs*, 2015; European Investment Fund, *The importance of leasing for SME finance*, 2012; European Central Bank, Survey on the Access to Finance of Enterprises in the euro area, June 2018

^[3] European Central Bank, Survey on the Access to Finance of Enterprises in the euro area, June 2018