Resolution on the Motor Vehicle Block Exemption Regulation

2010/2636(RSP) - 06/05/2010 - Text adopted by Parliament, single reading

The European Parliament adopted a resolution tabled by the Committee on Economic and Monetary Affairs on the Motor Vehicle Block Exemption Regulation. It recalls that distribution agreements are regulated at EU level through two separate legal frameworks: on the one hand, a Directive providing for the coordination of national laws regarding commercial representation agreements (Directive 86/653/EEC, the Commercial Agency Directive), and, on the other hand, two block exemption regulations in the context of competition law as far as vertical distribution agreements are concerned. These are Commission Regulation (EC) No 2790/1999 (the general vertical agreements block exemption regulation, or the “current GBER”) and Commission Regulation (EC) No 1400/2002 (“the motor vehicles block exemption regulation, or the "current MVBER"). Both the current GBER and the MVBER will expire on 31 May 2010, and the Commission has launched the process of reviewing both regulations and their accompanying guidelines. Members also recall that the scope of the current MVBER encompasses three different product markets: (a) new motor vehicles (primary market); (b) spare parts for motor vehicles (aftermarket); and (c) repair and maintenance services (aftermarket). Whilst retail prices for passenger cars have been decreasing, competition on the repair and maintenance markets is still very limited and prices are very high for certain types of spare parts. The Commission proposes that a specific block exemption for the purchase and sale of new motor vehicles (primary market) is no longer needed and that the new GBER will apply to the primary market after a prolongation period of 3 years. Until 31 May 2013, the current MVBER will continue to apply to the primary market. For the aftermarket (spare parts for motor vehicles, repair and maintenance services), the Commission proposes to adopt a special block exemption regulation, the new MVBER. Members note that the vast majority of the motor trade and repair businesses have expressed their serious concerns about a risk of temporary suspension or short-term prolongation of the current MVBER, as it will lead to a further deterioration of the power balance between manufacturers and the rest of the automotive value chain and will benefit only the handful of major vehicle manufacturers.

Parliament welcomes the fact that the Commission has opened several public consultations as regards the review of both the MVBER and the GBER, and appreciates that the Commission has submitted to Parliament the evaluation report on the application of the current MVBER. It calls on the Commission to specify which contributions from the stakeholders, if any, it intends to incorporate in the final regulation so as to ensure a transparent drafting of the final MVBER and GBER. Members stress that t is necessary to establish general conditions to make the motor vehicle industry in the EU, including both vehicle manufacturers and vehicle parts producers, sustainable and enable it to remain economically efficient and in the forefront of technological, ecological and social innovation.

They believe that the new MVBER should be regarded as a piece of an integrated approach to legislation in the motor vehicle sector. In view of the importance of legal certainty, they call on the Commission to draft Frequently Asked Questions or an Explanatory Brochure to explain in more detail the new legislative framework to market players. They also stress that there is a need to ensure that small and medium-sized players in the automotive supply chain enjoy favourable conditions, with a solid regulatory framework able effectively to prevent any abuse of any dominant position and ensure that there is no increase of dependence of SMEs vis-à-vis large manufacturers.

Parliament is not in favour of the removal of certain conditions imposed by the current MVBER for an agreement to be exempted, namely the contractual clauses on multi-branding, notice of termination, duration, arbitration of disputes, litigation and business transfers within the network. It draws attention to

the risk represented by a single branding obligation for consumer choice and dealers" independence vis-à-vis manufacturers, and fears that these clauses might become subject to the different national contract laws. It also believes that multi-branding as well as easy access to repair and maintenance services help to reach the objective of lower emission vehicles through easy comparison of vehicles when buying a car and adequately functioning vehicles, and reiterates its request to investigate the effectiveness of State aid granted to the motor vehicle sector for "green recovery".

The resolution calls on the Commission to:

- ensure that distributors, including from the motor vehicle sector, benefit from the same level of contractual protection throughout the EU as commercial agents currently do. Such an alignment could be achieved by amending Directive 86/653/EEC and partially extending its scope of application to include all distribution agreements;
- ensure that the new MVBER and GBER stipulate the required conditions, such as the end user definition, to allow commercial alternatives to develop and contribute to healthy competition in the automotive market. Parliament emphasises that it is important particularly in times of economic distress to allow concrete commercial alternatives to ownership, such as leasing, to satisfy the mobility needs of individuals;
- maintain the threshold of 30% for the obligation to purchase spare parts, in order to keep authorised repairers" freedom to purchase spare parts from other sources than the vehicle manufacturer and therefore avoid coming back to a quasi-captive supplying, which would increase spare parts" prices and cut other spare parts suppliers" activity;
- update the definition of technical information on the basis of technological progress and to ensure continued access to updated services and parts data in readily accessible electronic formats, due to concern that the Commission's proposed guidelines for the motor vehicle sector are insufficiently precise to ensure technical information is made available to independent dealers in the same comprehensive format as provided for in Regulation (EC) No 715/2007 and Regulation (EC) No 595 /2009;.
- apply the new aftermarket rules as of the 1st June 2010 irrespective of solutions to be adopted regarding the sales of new vehicles;
- address new forms of anticompetitive customer tying measures such as any type of after-sales service contingent upon the exclusive repair or maintenance of a vehicle within the brand-specific network;
- monitor the operation of the new legal framework for the automotive sector on a regular basis;
- carry out a thorough reassessment of the competition conditions in the motor vehicle primary market before the end of the prolongation period, focusing on the impact of certain contractual clauses such as multi-branding, business transfer and the threshold for spare parts, as well as on the provisions of the proposed Code of Conduct;
- in this respect, to leave all regulatory options open and to take appropriate measures, including a new prolongation of part of the MVBER or revisions to be made to the GBER, should it appear that the competitive conditions in particular in the primary market have significantly worsened.

Parliament states that it is not in favour of a non-binding Code of Conduct setting out mutual obligations between franchised dealers and their suppliers which will be ineffective in protecting dealers" interests vis-à-vis manufacturers. Any Code of Conduct should be accompanied by a proper enforcement mechanism, namely access to an appropriate arbitration procedure.

Lastly, it stresses that Parliament should be informed by the Commission of any adaptation of the new legal framework that it might envisage to adopt as a result of its market monitoring and that Parliament should be consulted in good time before such a decision is taken.