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MVBER

ADPA input to call for evidence

SAFETY - SUSTAINABILITY - AFFORDABILITY



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Notice

This document is the detailed input from ADPA to the call for evidence on the Motor Vehicle Block Exemption Regulation organised by the European Commission from the 27th of May 2024 to the 24th of June 2024.

ADPA remains of course available to discuss it further with relevant institutions and fellow stakeholders.

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Introduction

In times of recurrent crisis and important pressure on households' and public budgets, maintaining and even increasing the levels of competition for such an important budget line as road mobility would preserve the purchasing power, while not increasing public expenditure, making it an exceptionally cost-effective public policy. To this end, a robust upgrade of the Motor Vehicle Block Exemption Regulation (MVBBER) regime would be fully in line with the European Commission's objectives.

Against this background, ADPA welcomes the European Commission's intention to evaluate the MVBBER and its accompanying Supplementary Guidelines. ADPA strongly believes that both market developments (based on technical changes and commercial practices) and enforcement experience mandate to maintain and to modernise the MVBBER regime to make it even more efficient and more future-proof, also in line with the European Commission's objectives for better regulation.

ADPA suggests in particular to have a close look at all provisions related directly or indirectly to the access of independent operators to technical information, which is an essential element for a competitive aftermarket and ensuring the safety, sustainability and affordability of road mobility.

1. Scope

1.1. Assessment of the pivotal and essential role of the MVBBER for competition in the automotive aftermarket

ADPA considers that sector-specific competition rules remain more necessary than ever. On the one hand, other competition legislations (such as the Vertical Block Exemption Regulation) don't provide enough granularity to tackle effectively, precisely and rapidly the specificities and the realities of the complex automotive aftermarket. On the other hand, other legislations containing provisions facilitating access to certain technical information for independent operators in the automotive aftermarket (such as the Type Approval Regulation) precisely rely on the MVBBER to enable effective competition. The MVBBER therefore plays a pivotal role between competition law and technical regulation, which ADPA recommends to assess closely to understand the existing legal interdependencies and the chain reaction that an eventual termination of the MVBBER would have.

The MVBBER provides some unequivocal requirements which are easy to assess, making it simpler for all stakeholders to ensure their practices are in line with the spirit and the letter of the legislation. As such, in particular for smaller businesses (the vast majority of companies in the automotive aftermarket), it is an unparalleled tool providing much needed legal certainty, in a cost-effective way. ADPA recommends to investigate what would be the consequences, for the independent aftermarket and the consumers alike, of an eventual termination of the MVBBER.



1.2. No exclusive focus on digitalisation

Given the increasing complexity of vehicles, workshops have to rely more and more on timely and trustworthy technical information. In the independent aftermarket, multi-brand workshops traditionally rely on the publishers of technical information for this, who themselves are sourcing the “raw”, “original” information to the vehicle manufacturers. However, there are still numerous commercial and technical hindrances uselessly complexifying, increasing the cost of and delaying the possibility for publishers to access, process and make available such information. The Supplementary Guidelines already partially addresses the issue, under the ‘essential inputs-umbrella’, which is one of three important topics, next to the servicing of vehicle under warranty and the trade in spare parts.

ADPA therefore highly recommends to not focus exclusively on “the changes resulting from the ongoing digitalisation of the automotive market, in particular the increasing importance of data on the aftermarkets”, but also on these three important topics which continue to deserve attention and upgrade. Considering the activities of its Members, ADPA is of course more particularly concerned with the first topic on access to technical information, but ADPA still considers the correct implementation and modernisation of these three items to be equally important to maintain a fair level of competition throughout the entire automotive aftermarket.

1.3. Commercial and technical barriers to competition

New commercial practices and technical processes can result, voluntarily or not, in restriction of competition, circumventing the spirit of the MVBER regime. Beyond the sheer principle of access to technical information, emphasis should also be placed on the actual, effective conditions for such access (latency, vector, price...). Access and interoperability are indeed fundamental conditions to facilitate innovation in the European Union.

In the case of digitalisation, it is important to notice that independent operators, in order to be able to offer alternative, innovative, competitive services and solutions, don’t need a “read” access only, but also a “write” access (under, of course, certain conditions). This is currently not addressed under the existing regime, which impairs the capability of the independent aftermarket to effectively put on the market new services. ADPA recommends that such impairments should be documented (using extensive literature on the matter) and that ways to adequately adapt the MVBER should be explored.

Electrification also brings new challenges, increasing the importance of the completeness of related technical information. Consumers are often hesitant to adopt e-mobility, having concerns on the total cost of ownership and the cost of repair and maintenance. This is in particular due to the lack of granularity of information for the servicing of traction batteries. Also important, safety information (on the handling of the battery and the chemical, electrical and fire hazard) is often not available. ADPA recommends the European Commission to list all technical information which would be needed to ensure a smooth, safe and sustainable servicing of batteries.



1.4. Legal barriers to competition and extension of the proportionality principle

ADPA recommends to list the legal arguments used to circumvent the provisions of the MVBBER regime, and to assess their validity with a view to find acceptable, sustainable solutions to raised concerns. For example, some inputs are sometimes not shared under pretexts related to:

- Data privacy;
- Cybersecurity;
- Anti-tampering;
- Anti-theft.

While these concerns are, per se, legitimate, using them as a generic argument to not share some essential inputs should be avoided where possible and considered disproportionate. ADPA recommends therefore to also investigate the possibility to extend the proportionality principle newly introduced under paragraph 62b of the Supplementary Guidelines. The coexistence of different legislations should not create grey zones resulting in divergent interpretations and legal uncertainty.

1.5. No excessive focus on quantification of enforcement

A purely quantitative assessment of enforcement activities by the European Commission and National Competition Authorities should not be considered as sufficient. In case of low enforcement activities, different underlying circumstances might explain it, in particular:

- Companies might not be well informed about their rights;
- Companies might be hesitant to start enforcement actions due to their economic relationship with larger stakeholders;
- There might be few to none ex officio investigations due to the apparent limited impact of individual cases (not reflecting the bigger picture that the various cases across stakeholders and countries shows serious and systemic limitations to competition when added up);
- The regulation might offer enough guidance to avoid the need of enforcement.

ADPA considers that the prevalence and roots of these possible explanations should also be investigated.

1.6. International lighthouse effect

ADPA welcomes the ambition of the European Union to be at the worldwide forefront of competition and innovation. The normative influence of the European Union remains very strong, and the MVBBER is a good example of this. Several countries, such as Australia and South Africa, have adopted measures echoing the MVBBER. ADPA suggests that the European Commission might take into consideration that other jurisdictions have embraced the MVBBER regime and adopted similar provisions, showing the continuous relevance of such sector-specific competition legislation.



2. Next steps

2.1. Public consultation

ADPA understands that another public consultation is scheduled for the end of this year. ADPA highly recommends for this consultation to last as long as possible – a strict minimum of 12 weeks, possibly longer – , in order to allow all interested parties to be able to submit meaningful, precise and substantiated inputs, making it a successful and reliable exercise.

ADPA also considers that this public consultation could take place later, in order to have more time to assess how “possible market changes, such as those resulting from vehicle digitalisation, electrification and new mobility patterns” referred to in the European Commission’s press release of 17 April 2023, are materialising since the last evaluation exercise.

2.2. Consultation of other institutional stakeholders

ADPA suggests to liaise closely, as usual, with the National Competition Authorities, and to reflect their experience and suggestions.

Considering the political importance of purchasing power and the fact that mobility is one of the most important expenses (within which, repair and maintenance itself is an important component) for European households, ADPA suggests to also closely associate the European Parliament, in its consultative capacity.



Annex 1 - Used acronyms

ADPA Automotive Data Publishers Association

MVBER Motor Vehicle Block Exemption Regulation





About ADPA Members


ADPA Members are worldwide pioneers and leaders for the reparability of increasingly complex goods providing aggregated, harmonised, intelligible and ready-to-use technical information for the reparation, maintenance and servicing of over 280 million vehicles from more than 40 different manufacturers on European roads ensuring their roadworthiness, safety and environmental performance over their lifetime in a reliable, timely and affordable way.


About ADPA - Automotive Data Publishers Association


ADPA, the Automotive Data Publishers Association, aims to ensure fair access to automotive data and information needed for servicing, repairing and maintaining road vehicles.

It advocates for international, European and national legislations maintaining and improving competition and consumers' choice in the automotive aftermarket by preventing or limiting the establishment of brand-specific monopolies.

Founded in 2016 and based in Brussels, ADPA is a Member of AFCAR, the Alliance for the Freedom of Car Repair in the European Union, and FAAS, the Forum on Automotive Aftermarket Sustainability.

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