

## Warranties and work during the warranty period

Vehicle manufacturers **cannot make their warranties contingent** on the repair or servicing of a vehicle within their network, or on the use of their own branded spare parts.

According to the new rules in force since 1<sup>st</sup> June 2010, consumers should be able to use any repair shop for regular servicing or repair work, during both the statutory warranty period and any extended warranty period. The vehicle owners should be able to have their property maintained or repaired at a workshop of their choice without having to fear incurring disadvantages in the repair of manufacturing defects on the part of the vehicle manufacturer. Where this is not the case, vehicle manufacturers will be scrutinised by the competition authorities.



Of course, every operator is subject to statutory product and service liability. Thus, anyone who damages a vehicle as a result of negligent work or use of defective parts is responsible for it.

### Recall actions, free servicing and warranty work

Any defect originating from the car manufacturing process must be corrected by the vehicle manufacturer. In such cases paid for by the manufacturer, i.e. recall actions or free servicing or warranty work etc., the works must be carried out where specified by the manufacturer. In these cases, the work by the repair centre is not paid for by the motor vehicle owner but by the vehicle manufacturer. The principle of «He, who pays the piper, calls the tune» applies accordingly. The manufacturer will also determine which parts are to be used.

### Insurance policies and warranty contracts

The Commission's guidelines do not mention any exceptions from these general principles. They should be respected throughout the sector. However, further guidance is expected on whether limitations to the consumer's right to go to the workshop of its choice may apply in limited cases, such as financing, insurance or ancillary services signed separately from the contract for the purchase of the vehicle (e.g. breakdown covers).



The Right to Repair Campaign (R2RC) gathers a wide range of aftermarket stakeholders and motorist representatives having an interest in the promotion of a competitive regulatory environment for the automotive aftermarket.

It is supported by authorised and independent repairers, independent parts distributors, part suppliers, producers of diagnostic tool and garage equipment, trade groups, roadside rescuing operators and motorist clubs and is open to any who care about the future of the multi-brand automotive aftermarket, and its rightful claim for free consumer choice in a competitive after-sales market.

Initiated by FIGIEFA, the members of the Right to Repair Campaign are AIRC, CECRA, EGEEA, FIA, FIGIEFA and FIRM.



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FIGIEFA has undertaken measures to ensure the correctness of the representations made in this leaflet. It should however be noted that the explanations given herein are of general nature. As any individual case may bear different characteristics, they are not meant to replace specific legal advice. Please refer to the original version in English.

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The new competition law framework for the automotive aftermarket

Opportunities for repair workshops

## From “Motor Vehicle BER” to “Aftermarket BER”

A new competition law framework for the automotive sector entered into force on 1 June 2010. It replaces the former Block Exemption Regulation (EC) No. 1400/2002. The new set of rules is composed of an “Aftermarket” Block Exemption<sup>1</sup> and a “General” Block Exemption Regulation<sup>2</sup>. Whereas the previous Motor Vehicle BER 1400/2002 also included provisions on new vehicle sales, the new «Aftermarket BER» relates exclusively to the markets for servicing, repair and spare parts.

These new Block Exemption Regulations are accompanied by sector-specific Guidelines. All together these instruments aim to secure the foundations for effective competition in the automotive aftermarket to the benefit of consumers. To this end, it also protects the essentials of aftermarket operators in the parts distribution and repair sector.

These essentials include:

1. Access for independent operators to repair and maintenance information, tools and training provided by the vehicle manufacturer.
2. Access for multi-brand repairers to all vehicle manufacturers’ spare parts.
3. The possibility for the members of the vehicle manufacturers’ authorised network to source quality parts and tools from independent distributors.
4. The possibility for spare parts manufacturers to supply their products directly to the aftermarket and to also affix their trademark to the parts they supply to the vehicle manufacturers (double branding).
5. The definition of the term “original spare parts” on the basis of the quality of the parts and not the origin of the spare parts.
6. The definition of the term “spare parts of matching quality”

Many provisions from the former “Motor Vehicle BER” were transferred to the new “Aftermarket BER” while other rules were refined. The following outline intends to give an overview of the provisions relevant to the repair sector.

1. Commission Regulation (EU) 461/2010 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

2. Commission Regulation (EU) No 330/2010 of 20 April 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

## Purchasing Spare Parts

With the introduction of the “Aftermarket BER”, the freedom to purchase of spare parts for repairers in Europe has been strengthened, as hindrances to suppliers have been removed. An original equipment supplier (OES) may, as a rule, freely supply its products to the entire aftermarket. Both multi-brand and single brand workshops can purchase these parts.

### Minimum purchase requirements

Under the previous BER 1400/2002, vehicle manufacturers (OEM) could force their franchised dealer/repairer to purchase at least 30 percent of their spare parts requirements from the authorised network. Due to their high market shares in the relevant spare parts market, this provision has now been removed. Therefore, vehicle manufacturers may not impose significant minimum purchasing requirements on their franchised repairers. Given their high market share, they may not insist on 80% or even 100% of purchasing obligations. In fact, minimum purchasing obligations, even very low, would need to undergo an assessment on their effects on competition. The EU Commission and the National Competition Authorities will be able to rigidly intervene.

Repairers affiliated to repair networks of independent spare parts distributors, in contrast, may be obligated to minimum acceptance volumes for contracts with terms of up to five years without an upper limit, and contract terms from five years onwards up to a maximum of 80 percent. As in all distribution contracts, the boundaries of cartel law must also be observed in agreements between distributors and repair and servicing centres in respect of non-binding recommended prices or restrictions in the customer base

### Access to vehicle manufacturers’ branded spare parts

According to the “Aftermarket BER”, vehicle manufacturers may not restrict the trade between repairers. As such, authorised repairers/dealers may sell spare parts to their colleagues of the independent repair sector.



## Access to Technical Information

Multi-brand workshops (as well all operators in the independent automotive aftermarket) must be granted access to technical information by the vehicle manufacturers. This includes repair information as well as the data required by the spare parts distributors and repairers to clearly identify suitable spare parts for a specific motor vehicle. The way in which technical information is supplied is also important. Access should be given upon request and without undue delay, in a usable form, and the price charged should not discourage access to it by failing to take into account the extent to which the operator uses the information. For new vehicles on the market, vehicle manufacturers are asked to give independent operators access to technical information at the same time as to its authorised repairers. They should not oblige independent operators to purchase more than the information necessary.

## Original Parts and Parts of Matching Quality

Dealers and authorised repairers may also purchase quality parts from independent spare parts distributors. Vehicle manufacturers may not prevent them from sourcing and using “matching quality” spare parts (parts which, according to the European Commission, “do not harm the reputation of the vehicle manufacturer”) as well as “original spare parts” (parts manufactured according to the specifications and manufacturing standards used for the assembly of the vehicle).

The fact that many original spare parts and matching quality products are available on the independent market is often used in marketing campaigns. However, advertising by independent operators using the terminology of the BER must not be misleading: the advertisement should render clear the advertised product or service is not linked to the vehicle manufacturer’s authorised network

## Service Contracts

There are no significant changes to access to service contracts with vehicle manufacturers: Whoever meets the OEM’s quality requirements may not be refused a service contract.