



ADDITIONAL INFORMATION

[CECRA's position papers](#) are available on its website

CECRA's reply to EC's public consultation "The Future Competition Law Framework".

CECRA's comments on The Future Regulatory Framework for Competition in Automotive Sector.

CECRA's request to have a Motor Vehicle Block Exemption Regulation 1400/2002 beyond 2010.

CECRA's comments on The EC Evaluation Report on operation MVBBER 1400/2002.

CECRA's requests to maintain contractual clauses Competition role of contractual clauses in MVBBER 1400/2002.

CECRA's claims MVBBER 1400/2002 is in favour of the Consumers.

Or contact

Bernard Lycke, General Director

E: Bernard.Lycke@cecra.eu

T: +32 2 771 96 56



Boulevard de la Woluwe 42, 6
1200 Brussels / Belgium
T: +32 2 771 96 56
F: +32 2 772 65 67
E: mail@cecra.eu
www.cecra.eu



The automobile
distribution as from
the 1st of June 2013

Are legal regulations
necessary?

New regulations for the automobile distribution

A REAL NEED FOR NEW REGULATIONS

A sector specific legal framework for automobile dealers has been in existence since 1985. From the 1st June 2013 it will be different as the current specific Motor Vehicle Block Exemption Regulation 1400/2002 will expire.

The general regulations being valid for selective distribution systems of other sectors (e.g. McDonald's) will then apply. Some provisions, taking the particularities of the automobile distribution into account, will disappear without replacement. Among those provisions are the minimum period of notice of two years for contracts with indefinite period or the opportunity to transfer a dealer contract without the manufacturer's prior consent.



Problem

NO MORE EUROPEAN-WIDE STANDARDISED REGULATIONS REGARDING THE CONTRACTUAL RELATIONSHIP BETWEEN MANUFACTURERS AND AUTHORISED DEALERS AS FROM JUNE 2013

However, this seems to be urgently necessary especially in view of the particularities of authorised dealer systems. Authorised dealer systems are characterised by a manufacturer cooperating with selected authorised dealers on a contractual basis. The manufacturer's objective is to influence extensively how the products are distributed, without himself having to invest in the construction or maintenance of the distribution sites. Therefore, authorised dealer contracts typically contain strict requirements regarding the distribution of products, ranging from the design of the premises to the qualifications of the personnel.

Authorised dealers hope for individual profit opportunities resulting from such a cooperation, being planned for a long term.

There is, in view of the investments made trusting that the contractual relationship will continue, at least to a certain degree a need for protection of the authorised dealer. This refers to minimum periods of notice and claims for recompense for the gained clientele, the advantage of which can be used by the manufacturer after contract termination. Furthermore, compensation for investments made which can no longer be amortised after contract termination needs to be recoverable.

Corresponding legal regulations exist in some EU countries, such as for example in Belgium and Austria but are only partial. In other countries – such as for example in Germany – where there is jurisdiction regarding the application of provisions of the law of commercial agents to authorised dealers. Those provisions guarantee the dealer a claim for adjustment for example after the contract termination by the manufacturer. Moreover, there are countries in the EU having neither legal regulations nor jurisdiction regarding the contractual relationship between manufacturer and authorised dealer. In any case, a European-wide standardised regulation does not exist.

This contradicts the idea of a European single market since different national regulations respectively omitting regulations in single countries complicate cross border activities of authorised dealers. This might lead as a direct consequence to distortions of competition in the European Single Market, since authorised dealers from countries complying with their need for protection have an advantage over their dealer colleagues from countries where the need for protection is not taken into account.

Owing to the fact that not only retailers in general, but also authorised dealers in particular, are mainly small and medium-sized enterprises, the lack of European-wide standardised regulations also contradicts the Small Business Act – a key element of European policy. A pro small business policy with the central idea „Think small first“ is indispensable, in order to create fair starting conditions for competition in the European Single Market. If the authorised dealers in the EU member states each find different starting conditions, they will not be able to achieve their growth and employment potential.

Those and other provisions were introduced by the European Commission in 2002 in order to stimulate the competition on the automotive market.

The European Commission agreed at that time that automobile dealers should have the opportunity to develop as entrepreneurs, without having to fear that car manufacturers will penalise their competitive behaviour (e.g. representing an additional brand).

From June 2013, the dependence of the dealers, being predominantly small and medium-sized, on the car manufacturers will again increase as the European Commission no longer considers those special regulations being necessary.



Solution

TO EXTEND THE AGENT'S DIRECTIVE TO AUTHORISED DEALERS

Since 1986, there has been an EU Directive (86/653) governing the legal relationship between manufacturers and self-employed commercial agents within the EU. According to an analysis conducted in 2004 at the RFH Cologne, only 17% of the distribution systems in the EU are commercial agent systems, but 63% are authorised dealer systems. This means: there is a legal basis for 17% of the distribution systems, but not for the rest. Due to the similarity in principle of the systems, it is appropriate and compelling to extend the scope of application of the Agent's Directive to authorised dealers.

However, given the particularities of authorised dealer systems compared to commercial agent systems, some modifications of the directive seem to be reasonable and necessary. This is due to the fact that commercial agents bear in general significantly lower entrepreneurial risks than authorised dealers; they invest at the most insignificantly in the establishment of their business. Given that the commercial agent is therefore less in need of protection than the authorised dealer, the Agent's Directive currently include protection of investments.

Therefore, a minimum period of notice of two years for authorised dealers should be included in the directive – different from the provisions applicable for commercial agents. Furthermore, in case of a contract termination, otherwise than for significant authorised dealer default, compensation by the manufacturer should be provided for in respect of unamortised investments the authorised dealer was required to undertake.

Report of the Committee on the Internal Market & Consumer Protection of the European Parliament

The draft report on a more efficient and fairer market (2010/2109(INI)) emphasises that *if the retailers and the suppliers have a shared responsibility in achieving a more efficient and fairer retail market, there is a consequent concern regarding likely market dominance by bigger actors, who are perceived to impose unfair terms on small suppliers and traders, for instance through mechanisms of selective distribution, restrictive practices, price control (...) thereby distorting competition. The report emphasises that the entire retail supply chain is affected by such practices.*

Resolution of the European Parliament

In its resolution of 6th May 2010, the European Parliament *“calls on the Commission to ensure that distributors, including those from the motor vehicle sector, benefit from the same level of contractual protection throughout the EU as commercial agents currently do. It believes that such an alignment could be achieved by amending Directive 86/653/EEC and partially extending its scope of application to include all distribution agreements.”*