

# EUROPEAN PARLIAMENT

1999



2004

---

*Session document*

FINAL  
**A5-0144/2002**

24 April 2002

## REPORT

on the draft Commission regulation on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry  
(2002/2046(INI))

Committee on Economic and Monetary Affairs

Rapporteur: Christoph Werner Konrad



## CONTENTS

	<b>Page</b>
PROCEDURAL PAGE .....	4
MOTION FOR A RESOLUTION.....	5
EXPLANATORY STATEMENT .....	26
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET .....	30

## PROCEDURAL PAGE

By letter of 11 February 2002, the Commission forwarded to Parliament a draft regulation on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry .

At the sitting of 11 April 2002 the President of Parliament announced that the Committee on Economic and Monetary Affairs had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on the Draft Commission Draft Regulation on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry and that the Committee on Legal Affairs and the Internal Market had been asked for its opinion.

The Committee on Economic and Monetary Affairs appointed Christoph Werner Konrad rapporteur at its meeting of 6 November 2000.

It considered the draft Commission regulation on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry and the draft report at its meetings of 21 March 2001, 25 June 2001, 11 September 2001, 20 February 2002, 25 February 2002, 20 March 2002, 15 April 2002, 22 April 2002 and 23 April 2002.

At the last meeting it adopted the motion for a resolution by 25 votes to 6 , with 3 abstentions.

The following were present for the vote: Christa Randzio-Plath, chairwoman; José Manuel García-Margallo y Marfil, Philippe A.R. Herzog and John Purvis, vice-chairmen; Christoph Werner Konrad, rapporteur; Generoso Andria, Maria Berger (for full member to be nominated pursuant to Rule 153(2)), Roberto Felice Bigliardo, Hans Udo Bullmann, Harald Ettl (for Pervenche Berès), Robert Goebbels, Lutz Goepel (for Astrid Lulling), Lisbeth Grönfeldt Bergman, Mary Honeyball, Christopher Huhne, Othmar Karas, Giorgos Katiforis, Piia-Noora Kauppi, Wilfried Kuckelkorn (for Helena Torres Marques), Werner Langen (for Ingo Friedrich), Ioannis Marinou, Helmuth Markov (for Armonia Bordes), David W. Martin, Hans-Peter Mayer, Miquel Mayol i Raynal, Fernando Pérez Royo, Mikko Pesälä (for Carles-Alfred Gasòliba i Böhm), José Javier Pomés Ruiz (for Brice Hortefeux), Alexander Radwan, Bernhard Rapkay, Olle Schmidt, Peter William Skinner, Bruno Trentin and Theresa Villiers. The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The opinion of the Committee on Legal Affairs and the Internal Market is attached.

The report was tabled on 24 April 2002 .

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## MOTION FOR A RESOLUTION

### **European Parliament resolution on the draft Commission regulation on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry (2002/2046(INI))**

*The European Parliament,*

- having regard to the draft Commission regulation on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry <sup>1)</sup>,
  - having regard to the Commission report on the evaluation of Regulation (EC) No 1475/95 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements (COM(2000) 743 ),
  - having regard to the most recent Commission report, of 25 February 2002, on motor vehicle prices in the European Union,
  - having regard to the hearing of 11 September 2001 of the Committee on Economic and Monetary Affairs,
  - having regard to Rule 163 of its Rules of Procedure
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs and the Internal Market (A5-0144/2002),
- A. whereas an internal market for motor vehicle distribution and services de facto does not exist in the European Union,
- B. whereas there continue to be substantial price differences on motor vehicles within the European Union, and whereas those differences may be as much as 40% between Member States on certain models,
- C. whereas the introduction of the euro has made those price differences obvious and will thus contribute to price convergence,
- D. whereas vertical distribution agreements, unlike virtually any other restriction on competition, may simultaneously have effects with the potential to both boost and hamper competition,
- E. whereas the future EU competition policy relating to vertical distribution agreements must be framed so as to take appropriate account of the unequal economic power wielded by manufacturers and distributors,
- F. whereas any opening-up of motor vehicle distribution and services to competition must in

---

<sup>1</sup> OJ C 67, 16.3.2002, p. 2-26.

no circumstances lead to traffic safety being jeopardised,

- G. whereas an immediate total liberalisation of this sector would be unjustified, but whereas a continuation of the existing system would be equally harmful,
- H. whereas the sector has for some time been undergoing comprehensive structural change and a process of concentration,
  - 1. Welcomes the general approach taken by the Commission, which is to build on the block exemption regulation instead of completely abandoning it or leaving it in place as it stands;
  - 2. Wishes, in the interests of fair competition, that this Regulation should take into account in particular the interests of smaller and medium-sized undertakings as the weaker trading partner so that a kind of liability is established for the stronger trading partner in respect of substantial investments which benefit the latter;
  - 3. Reminds the Commission that, to be effective, regulations must be clear, unambiguous and enforceable; is very concerned that the draft proposal is too complicated and unclear in its intentions; is surprised that further guidelines, not yet available, will also be required to interpret these proposals;

*Justification*

*Additional resolution points to be inserted to reinforce concerns expressed by the Committee on Legal Affairs and the Internal Market. To be inserted before the rapporteur's amendments to the draft regulation.*

- 4. Considers that over-complex regulation, and uncertainties over its interpretation, works against the interest of consumers and SMEs and favours players with large resources; insists that the Commission must re-evaluate its proposals if the real benefits for consumers are to be delivered quickly and effectively;

*Justification*

*Additional resolution points to be inserted to reinforce concerns expressed by the Committee on Legal Affairs and the Internal Market. To be inserted before the rapporteur's amendments to the draft regulation.*

- 5. Considers that the explanatory statements in the draft regulation - particularly those suggesting that car manufacturers can keep control over the size, density and composition of their dealer networks - are inconsistent with the regulatory proposals to disallow any form of 'location clause'; calls on the Commission to align its regulatory strategy statement with its legislative proposals;

*Justification*

*Additional resolution points to be inserted to reinforce concerns expressed by the Committee on Legal Affairs and the Internal Market. To be inserted before the rapporteur's amendments to the draft regulation.*

6. Calls on the Commission to make an early report on car sales tax discrepancies between EU Member States, their impact on car prices and the means of creating a true internal market;

*Justification*

*Additional resolution points to be inserted to reinforce concerns expressed by the Committee on Legal Affairs and the Internal Market. To be inserted before the rapporteur's amendments to the draft regulation.*

7. Calls on the Convention and the Intergovernmental Conference to ensure that regulations such as this are subject to the codecision procedure in future;
8. Calls on the Commission to take account of the suggested modifications:

Commission draft

Modifications by Parliament

---

Modification 1  
Recital 8

(8) It can be presumed that, where a suppliers share of the relevant market does not exceed the thresholds provided for in the general conditions for the application of this Regulation, vertical agreements which do not contain certain types of severely anti-competitive restraints generally lead to an improvement in production or distribution and allow consumers a fair share of the resulting benefits. This sector specific Regulation contains stricter rules than those provided for by Commission Regulation 2790/99, and it can therefore in particular be presumed that in general distribution agreements have such advantages where the supplier concerned has a market share ***of up to 30%, or of up to 40% in case of quantitative selective distribution for the sale of new motor vehicles.*** In the case of vertical agreements containing exclusive

(8) It can be presumed that, where a suppliers share of the relevant market does not exceed the thresholds provided for in the general conditions for the application of this Regulation, vertical agreements which do not contain certain types of severely anti-competitive restraints generally lead to an improvement in production or distribution and allow consumers a fair share of the resulting benefits. This sector specific Regulation contains stricter rules than those provided for by Commission Regulation 2790/99, and it can therefore in particular be presumed that in general distribution agreements have such advantages where the supplier concerned has a market share of up to 40%. In the case of vertical agreements containing exclusive supply obligations, it is the market share of the buyer which is

supply obligations, it is the market share of the buyer which is relevant for determining the overall effects of such vertical agreements on the market.

relevant for determining the overall effects of such vertical agreements on the market.

#### *Justification*

*The proposal for multiple thresholds is unnecessarily complicated, and will not make the regulation more effective in dealing with market abuses.*

#### Modification 2

##### Recital 10

(10) To prevent a supplier from terminating a contract because a distributor or a repairer engages in pro-competitive behaviour, such as active or passive sales to foreign consumers, multi-branding or subcontracting of after sales services, which may not be restricted under this Regulation, ***every notice of termination must clearly state the reasons for the termination. Furthermore, a period of notice, normally of two years is introduced in order to strengthen the independence of distributors from their suppliers.***

(10) To prevent a supplier from ***announcing an exceptional notice of termination*** because a distributor or a repairer engages in pro-competitive behaviour, such as active or passive sales to foreign consumers, multi-branding or subcontracting of after sales services, which may not be restricted under this Regulation, ***such notices of termination by the supplier shall not be legally valid. In order to strengthen the independence of distributors and authorised repairers from their suppliers, the Regulation shall provide for a minimum period of notice of two years in the case of regular terminations and liability to pay compensation in the event that the distributor or authorised repairer has made substantial investments at the instigation of the supplier which have not yet been amortised when the notice of termination comes into effect and the distributor or authorised repairer in question cannot put them to any other reasonable commercial use or can only do so with great difficulty.***

#### *Justification*

*The supplier may only terminate a contract as an exceptional measure if the distributor fails to comply with the terms of the contract, not if he engages in pro-competitive behaviour. Regular terminations must continue to be possible without reasons being given. The Commission proposal makes this impossible. In the event of regular terminations, the investments of distributors and/or repairers must be protected.*



Modification 3  
Recital 14 a (new)

***(14a) In order to safeguard the functioning of the European internal market, suppliers may choose between a selective and an exclusive distribution system, provided that they use the same system within the European Union.***

*Justification*

*In providing the opportunity to choose between selective and exclusive distribution, care must be taken to ensure that a manufacturer's decision in favour of one or the other distribution system applies Europe-wide. A combination of both systems must be prohibited.*

Modification 4  
Recital 21

(21) Motor vehicles are expensive and technically complex mobile goods which require repair and maintenance services at regular and irregular intervals. However, it is not indispensable for distributors of new motor vehicles to also carry out repair and maintenance services. The legitimate interest of suppliers and consumers can be fully satisfied if the distributor subcontracts these services, including the honouring of warranties, free servicing and recall work, to a repairer or to a number of repairers within the distribution system of the supplier and if the consumer is duly informed about the location of the official repairer in case of subcontracting. Nor is it necessary, in order to adequately provide for repair and maintenance services, for repairers to also sell new motor vehicles. This Regulation therefore does not cover vertical agreements containing any direct or indirect obligation or incentive which leads to the linking of

(21) Motor vehicles are expensive and technically complex mobile goods which require repair and maintenance services at regular and irregular intervals. However, it is not indispensable for distributors of new motor vehicles to also carry out repair and maintenance services. The legitimate interest of suppliers and consumers can be fully satisfied if the distributor subcontracts these services, including the honouring of warranties, free servicing and recall work, to a repairer or to a number of repairers within the distribution system of the supplier ***one of which must operate in the immediate vicinity or else the distributor must organise access to service and repair work locally*** and if the consumer is duly informed ***about the location of the official repairer*** in case of subcontracting. Nor is it necessary, in order to adequately provide for repair and maintenance services, for repairers to also sell new motor vehicles. This Regulation

sales and after sales service activities or which makes the performance of one of these activities dependent on the performance of the other; this is in particular the case where the remuneration of the distributors or authorised repairers relating to the purchase or sale of goods or services necessary for one activity is made dependent on the sales of goods or services relating to the other activity, or where all such goods are indistinctly aggregated into a single remuneration or discount system.

therefore does not cover vertical agreements containing any direct or indirect obligation or incentive which leads to the linking of sales and after sales service activities or which makes the performance of one of these activities dependent on the performance of the other; this is in particular the case where the remuneration of the distributors or authorised repairers relating to the purchase or sale of goods or services necessary for one activity is made dependent on the sales of goods or services relating to the other activity, or where all such goods are indistinctly aggregated into a single remuneration or discount system.

#### *Justification*

*Where distributors issue after-sales service contracts, they should include at least one authorised repairer at the same or a nearby location, because otherwise territorial coverage and easy accessibility of after-sales services in all parts of the EU by the motor vehicle manufacturer cannot be guaranteed. Where the distributor is unable to award after-sales service contracts locally, he must be able to organise services locally and arrange the transfer of passenger vehicles to the authorised repairer.*

#### Modification 5 Recital 21a (new)

***In order to ensure that the after- sales service network can be efficiency organised so as to attain the objectives of safety, environmental protection, profitability, practicability of recall organisations and ensuring the link between customers and manufacturers, manufacturers should be able to limit the number of authorised repairers.***

#### *Justification*

*If there are too many authorised repairers, the manufacturer is no longer able to run the network efficiently. The cost of training, assessing repairers, providing information, etc., would be too high. It would also be more difficult to recall products or react to suggestions for improvements. Since independent repairers also receive all the information necessary for*

*repair work, this would not restrict competition.*

Modification 6  
Recital 25

(25) In order to protect effective competition on the market for repair and maintenance services and to prevent foreclosure of independent repairers, manufacturers must allow interested independent operators to have full access to all technical information, diagnostic and other equipment, tools, including all relevant software, and training required for the repair and maintenance of motor vehicles. Independent operators who must be allowed such access include independent repairers, manufacturers of repair equipment or tools, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers. The conditions of access should in particular not discriminate between authorised and independent operators; access should be given in due course upon request; the price for the information should take account of the extent to which the independent operator uses it. A manufacturer should give independent repairers access to technical information on new motor vehicles at the same time as such access is given to its authorised repairers and should not oblige an independent repairer to purchase more than the necessary information needed for the type of repair or maintenance work to be executed. It is, however, legitimate and proper for suppliers to withhold access to technical information which might allow a third party to bypass or disarm on-board anti-theft devices. Moreover, the legitimate interest of the motor vehicle manufacturer to decide the mode of exploitation of its intellectual property rights and know-how has to be taken into account when granting licences to third parties. However, these rights must be exercised in a manner which avoids any type of abuse.

(25) In order to protect effective competition on the market for repair and maintenance services and to prevent foreclosure of independent repairers, manufacturers must allow interested independent operators to have full access to all technical information, diagnostic and other equipment, tools, including all relevant software, and training required for the repair and maintenance of motor vehicles. Independent operators who must be allowed such access include independent repairers, manufacturers of repair equipment or tools, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers. The conditions of access should in particular not discriminate between authorised and independent operators; access should be given in due course upon request; the price for the information should take account of the extent to which the independent operator uses it. A manufacturer should give independent repairers access to technical information on new motor vehicles at the same time as such access is given to its authorised repairers and should not oblige an independent repairer to purchase more than the necessary information needed for the type of repair or maintenance work to be executed. It is, however, legitimate and proper for suppliers to withhold access to technical information which might allow a third party to bypass or disarm on-board anti-theft devices ***or to recalibrate the computers in a motor vehicle in order to change the standard engine program.*** Moreover, the legitimate interest of the motor vehicle manufacturer to decide the mode of exploitation of its intellectual property rights and know-how has to be taken into account when granting licences to third parties. However, these rights

must be exercised in a manner which avoids any type of abuse.

### *Justification*

*Information relating to the recalibrating of computers is not necessary for repairing a motor vehicle. For reasons of security and liability, the manufacturer should not therefore be obliged to pass on such information.*

### Modification 7 Recital 26

(26) In order to ensure access to or to prevent collusion on the relevant markets and to give distributors opportunities to sell vehicles of brands from two or more manufacturers, that are not connected undertakings, certain specific conditions are to be attached to the block exemption. To this end, non-compete obligations should ***not*** be exempted. In particular, this Regulation does not cover any prohibition on sales of competing makes. This is without prejudice to the ability of the manufacturer to ***require the distributor to display the vehicles in brand-specific areas of the showroom in order to avoid brand confusion. However, further requirements, such as an obligation to employ brand specific sales personnel, are considered to be non-exempted indirect non-compete obligations. Similarly, an obligation to display the full range of motor vehicles constitutes a non-exempted indirect non-compete obligation if it makes the sale or display of vehicles manufactured by different undertakings impossible or unreasonably difficult***

(26) In order to ensure access to or to prevent collusion on the relevant markets and to give distributors opportunities to sell ***passenger*** vehicles of brands from two or more manufacturers, that are not connected undertakings, certain specific conditions are to be attached to the block exemption. To this end, non-compete obligations should ***only*** be exempted ***to a limited degree***. In particular, this Regulation does not cover any prohibition on sales of competing makes. This is without prejudice to the ability of the manufacturer to ***conclude with the distributor conditions for the separate representation of different brands, taking into account economic feasibility and market conditions in order to avoid brand confusion and inadvertently helping competing brands, to ensure that the brand image is maintained among customers and to guarantee a high quality of care and expertise by salesmen.*** An obligation to display the full range of motor vehicles constitutes a non-exempted indirect non-compete obligation if vehicles manufactured by different undertakings ***are being sold. In the event of a dispute between the supplier and distributor on the conditions required for separate brand representation, independent arbitration on***

***the contract terms should apply.***

*Justification*

*In the passenger sector, distributors must not be prevented from selling more than one brand. They should retain the contractual freedom to enter into agreements with suppliers on separate brand marketing, if this makes sense commercially and is in the mutual interests of distributors and suppliers. This will benefit consumers through improved after-sales services made possible by specialisation and competition between brands.*

Modification 8  
Recital 26a (new)

***26a. In the commercial vehicle sector a ban on the separation of brands could lead to restrictions on competition between brands, since suppliers often intervene with support measures in finally determining the sales price. A number of different suppliers would therefore rapidly be apprised of the competitiveness and marketing strategies of their competitors and would make no attempt to be competitive beyond this point. Commercial vehicle distributors shall therefore be permitted to agree on non-compete obligations with their suppliers.***

*Justification*

*In the commercial vehicle sector, brand exclusivity should be granted in accordance with the provisions of Regulation 2790/99 on vertical agreements, since there is no reason to treat this subsector differently from other branches, and excessively strict conditions for granting brand exclusivity may actually endanger competition.*

Modification 9  
Recital 28

(28) In addition, specific conditions are required to exclude certain restrictions in a selective distribution system from being covered by this Regulation. This applies in particular to obligations which have the effect of preventing the members of a selective distribution system from selling the brands of particular competing suppliers, which could easily lead to foreclosure of certain brands. Two further conditions are necessary in order to create opportunities for distributors who wish to seize market opportunities outside their place of establishment, for market integration and in order to increase price competition and choice of consumers where suppliers have a certain overall presence. To this end a restriction imposed on the authorised distributor of passenger cars as to its ability to establish itself in any Member State, is excluded from the cover of the Regulation. Moreover, for suppliers of new motor vehicles other than passenger cars, a condition limiting the duration of restrictions on the place of establishment of a distributor to five years is necessary in order to allow both parties to adapt their agreements to changing market conditions.

(28) In addition, specific conditions are required to exclude certain restrictions in a selective distribution system from being covered by this Regulation. This applies in particular to obligations which have the effect of preventing the members of a selective distribution system from selling the brands of particular competing suppliers, which could easily lead to foreclosure of certain brands. Two further conditions are necessary in order to create opportunities for distributors who wish to seize market opportunities outside their place of establishment, for market integration and in order to increase price competition and choice of consumers where suppliers have a certain overall presence. To this end a restriction imposed on the authorised distributor of passenger cars as to its ability to establish itself in any Member State, is excluded from the cover of the Regulation, ***provided that a review in 2005 shows that the conditions of Article 81(3) cannot be fulfilled without such an exclusion; an exclusion can therefore be considered, at the earliest, after the completion of the review.*** Moreover, for suppliers of new motor vehicles other than passenger cars, a condition limiting the duration of restrictions on the place of establishment of a distributor to five years is necessary in order to allow both parties to adapt their agreements to changing market conditions.

*Justification*

*A substantial increase in cross-border competition is already achieved by other provisions that seek to liberalise the car distribution sector and will have less severe impact on small and medium-sized businesses. So any move to prohibit the imposition of conditions concerning a dealer's place of establishment should depend on the Commission's assessment in 2005 as to whether such a drastic measure is really necessary to ensure compliance with the conditions of Article 81(3).*

Modification 10  
Recital 33

***In order to strengthen supervision of parallel networks of vertical agreements which have similar restrictive effects and which cover more than 50 % of a given market, the Commission may declare this Regulation inapplicable to vertical agreements containing specific restraints relating to the market concerned, thereby restoring the full application of Article 81 to such agreements***

***Deleted***

*Justification*

*The text of this article is taken from Regulation (EEC) No 2790/99 on vertical agreements. Its inclusion in the regulation concerning motor vehicle distribution seems pointless, in that this regulation is being proposed precisely because 'parallel networks of similar vertical restraints cover more than 50 % of [the] market' in the motor vehicle sector.*

Modification 11  
Article 1(b)

(b) "Non-compete obligation" means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than **50** % of the buyer's total purchases of the contract goods or services and their substitutes on the relevant market, calculated on the basis of the value of its purchases in the preceding calendar year. This does not ***include a requirement that the distributor sell motor vehicles from other suppliers in separate sales areas of the showroom in order to avoid confusion between the***

(b) "Non-compete obligation" means any direct or indirect obligation causing the buyer not to manufacture, purchase, sell or resell goods or services which compete with the contract goods or services, or any direct or indirect obligation on the buyer to purchase from the supplier or from another undertaking designated by the supplier more than **30** % of the buyer's total purchases of the contract goods or services and their substitutes on the relevant market, calculated on the basis of the value of its purchases in the preceding calendar year. This does not ***affect the freedom of the supplier to agree with the distributor on the separate representation of several makes, if this is commercially feasible.***

**makes;**

*Justification*

*In the passenger sector, distributors must not be prevented from selling more than one brand. They should retain the contractual freedom to enter into agreements with suppliers on separate brand marketing, if this makes sense commercially and is in the mutual interests of distributors and suppliers. This will benefit consumers through improved after-sales services made possible by specialisation and competition between brands.*

Modification 12  
Article 1, point q

(q) 'Original spare parts' are spare parts which are produced by the manufacturer of the components which are or were used for the assembly of the new motor vehicle and which are manufactured **on** the same production **line** as these components. It is **for the spare part producer to prove** that these **spare parts match the quality of** the components used for the assembly of the new motor **vehicles**.

(q) 'Original spare parts' are spare parts which are produced by the manufacturer of the components which are or were used for the assembly of the new motor vehicle and which are manufactured **according to** the same **specifications and** production **processes** as these components.

***In any case, measures must be taken to ensure that manufacturers of spare parts can be made accountable under civil law.***

*Justification*

*The current definition of 'original spare parts' is unclear, because in practice the 'original parts' for the construction of the new motor vehicle and the 'original parts' to cover spare parts requirements (of the motor manufacturer and of the independent parts market) are frequently manufactured in separate production facilities. The key criterion for matching quality should therefore not be the production line, but production according to the same specifications and production processes. The introduction of provisions which would make it considerably more difficult in practice to supply these 'original spare parts' runs counter to the Commission's objective of injecting greater competition into the motor vehicle parts market.*



## Modification 13

### Article 1, point r

(r) "Spare parts of matching quality" are spare parts which match the quality of the components which are or were used for the assembly of a new motor vehicle and which are produced by the producer of these components or another undertaking **and for which the spare part producer can prove that they match the quality of those components.**

(r) "Spare parts of matching quality" are spare parts which match the quality of the components which are or were used for the assembly of a new motor vehicle and which are produced by the producer of these components or another undertaking. ***It is for the spare part producer to prove to the purchaser that these spare parts match the quality of the components used for the assembly of the new motor vehicles.***

#### *Justification*

*Self-explanatory.*

## Modification 14

### Article 3(1)

1. Subject to paragraphs 2, 3, 4, 5, 6 and 7 of this Article, the exemption provided for in Article 2 shall apply on condition that the supplier's market share on the relevant market on which it sells the new motor vehicles, spare parts for motor vehicles or repair and maintenance services does not exceed **30 %**.

1. Subject to paragraphs 2, 3, 4, 5, 6 and 7 of this Article, the exemption provided for in Article 2 shall apply on condition that the supplier's market share on the relevant market on which it sells the new motor vehicles, spare parts for motor vehicles or repair and maintenance services does not exceed **40%**.

#### *Justification*

*The Commission proposal which provides for a number of different market share thresholds is unnecessarily complicated and will not make the Regulation more effective in dealing with market abuses.*

Modification 15  
Article 3(2)

***By way of exception to paragraph 1 the market share threshold for the application of Article 2 shall be 40 % for agreements establishing quantitative selective distribution systems for the sale of new motor vehicles***

***Deleted***

*Justification*

*In line with the Commission's new economic approach, the market shares of undertakings covered by an exemption may be higher if this exemption is subject to stricter conditions, as in this Regulation. Furthermore, the Commission proposal which provides for a number of different market share thresholds is unnecessarily complicated and will not make the Regulation more effective in dealing with market abuses.*

Modification 16  
Article 3(4)

4. In the case of vertical agreements containing exclusive supply obligations, the exemption provided for in Article 2 shall apply on condition that the market share held by the buyer does not exceed **30 %** of the relevant market on which it purchases the contract goods or services.

4. In the case of vertical agreements containing exclusive supply obligations, the exemption provided for in Article 2 shall apply on condition that the market share held by the buyer does not exceed **40 %** of the relevant market on which it purchases the contract goods or services.

*Justification*

*In line with the Commission's new economic approach, the market shares of undertakings covered by an exemption may be higher if this exemption is subject to stricter conditions, as in this Regulation. Furthermore, the Commission proposal which provides for a number of different market share thresholds is unnecessarily complicated and will not make the Regulation more effective in dealing with market abuses.*

Modification 17  
Article 3(5)

(5) The exemption provided for in Article 2 shall apply on condition that the vertical agreement concluded with a distributor or repairer provides that if a supplier wishes to give notice of termination, ***the notice must include detailed reasons for the termination in order to prevent a supplier*** to end a vertical agreement with a distributor because of practices which may not be restricted under this regulation, in particular those practices, restriction of which results in the misapplication of the exemption either to the vertical agreement as a whole, in accordance with Article 4, or to the restriction in question, in accordance with Article 5.

(5) The exemption provided for in Article 2 shall apply on condition that the vertical agreement concluded with a distributor or repairer provides that if a supplier wishes to give ***exceptional*** notice of termination, ***this is not legally valid if it is designed*** to end a vertical agreement with a distributor because of practices which may not be restricted under this regulation, in particular those practices, restriction of which results in the misapplication of the exemption either to the vertical agreement as a whole, in accordance with Article 4, or to the restriction in question, in accordance with Article 5.

*Justification*

*The supplier may only terminate a contract as an exceptional measure if the distributor fails to comply with the terms of the contract, not if he engages in pro-competitive behaviour. Regular terminations must continue to be possible without reasons being given. The Commission proposal makes this impossible. In the event of regular terminations, the investments of distributors and/or repairers must be protected. See also Article 3(6).*

Modification 18  
Article 3(6)

***(6) The exemption provided for in Article 2 shall apply on condition that the vertical agreement concluded with a distributor or repairer provides that if a supplier wishes to give notice of termination, the period of notice for regular termination of the agreement has to be at least two years for both parties; this period is reduced to at least one year where:***  
***(a) the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the***

***Deleted***

*agreement; or  
(b) the supplier terminates the agreement  
where it is necessary to reorganise the  
whole or a substantial part of the network.*

#### *Justification*

*The Commission itself stated in its evaluation report that the provisions governing notification of termination were a matter of national civil law and not European competition law. This is also evidenced by the fact that no other block exemption regulation contains such provisions.*

#### Modification 19 Article 3(7)

7. The exemption provided for in Article 2 shall apply on condition that the vertical agreement provides for the parties to refer disputes concerning the fulfilment of their contractual obligations to an independent expert third party or arbitrator. Such disputes may for instance arise over the application of agreed criteria to set sales targets, the attainment of sales targets or supply obligations, the implementation of stock requirements, the implementation of an obligation to provide or use demonstration vehicles, whether the prohibition to operate out of an unauthorised place of establishment limits the ability of the retailer's business to expand ***or whether the termination of an agreement is justified by the reasons given in the notice.*** This possibility is without prejudice to each party's right to apply to a national court.

7. The exemption provided for in Article 2 shall apply on condition that the vertical agreement provides for the parties to refer disputes concerning the fulfilment of their contractual obligations to an independent expert third party or arbitrator. Such disputes may for instance arise over the application of agreed criteria to set sales targets, the attainment of sales targets or supply obligations, the implementation of stock requirements, the implementation of an obligation to provide or use demonstration vehicles, whether the prohibition to operate out of an unauthorised place of establishment limits the ability of the retailer's business to expand, ***the economic feasibility of a separate brand representation or the questions whether: (a) a notification of termination has been issued owing to conduct which, under the terms of this Regulation, may not be restricted; (b) in the case of a regular notification of termination by the supplier, appropriate compensation shall be paid in accordance with Article 3(6) of this Regulation.*** This possibility is without prejudice to each party's right to apply to a national court.

*Justification*

*Motor vehicle manufacturers can always give a reason for terminating a contract, even if they wish to terminate a contract for reasons that are not permissible. It would therefore be more effective if such notices of termination were declared to be not legally binding. Disputes should be referred to an independent expert.*

Modification 20  
Article 4, paragraph 1, point aa (new)

***(aa) the introduction of a selective or exclusive distribution system in an area smaller than the entire common market;***

*Justification*

*See justification to Recital 14a (new).*

Modification 21  
Article 4.1(f)

(f) the restriction of the distributor's ability to sell any **motor** vehicle which corresponds to a model within the contract range of the distributor;

(f) the restriction of the distributor's ability to sell any **passenger** vehicle which corresponds to a model within the contract range of the distributor;

*Justification*

*Unlike in the case of passenger vehicles, no European type approval exists yet for commercial vehicles. It would be impossible to register commercial vehicles according to all the legislations of the countries of residence of potential customers.*

Modification 22  
Article 4, paragraph 1, subparagraph (g)

(g) the restriction of the ability of the distributor of motor vehicles to subcontract the provision of repair and maintenance services to authorised repairers on condition

(g) the restriction of the ability of the distributor of motor vehicles to subcontract the provision of repair and maintenance services to authorised repairers on condition

that the distributor duly informs the consumer before the conclusion of the sales contract about the location of the authorised repairer;

that the distributor ***subcontracts to at least one authorised repairer situated close to the distribution outlet and*** duly informs the consumer before the conclusion of the sales contract about the location of the authorised repairer; ***subcontracting of after-sales services to authorised repairers shall not invalidate the liability of the distributor for faulty repairs or maintenance;***

### *Justification*

*Consumers set great store by after-sales services close to hand. These services must remain accessible even when they have been subcontracted.*

*The quality of the service provided by the motor vehicle distribution system depends on a chain of responsibility that guarantees consumer safety and must not be called into question.*

### Modification 23

#### Article 4, paragraph 2, subparagraph 2 (new)

2. The exemption provided for in Article 2 shall not apply where the supplier of motor vehicles refuses to give independent operators access to any technical information, diagnostic and other equipment, tools, including any relevant software, and training required for the repair and maintenance of these motor vehicles or for the implementation of environmental protection measures. Access has to be given to independent operators in a non-discriminatory and proportionate way. If the relevant item is covered by an intellectual property right or constitutes know-how, access shall not be withheld in any abusive manner.

2. The exemption provided for in Article 2 shall not apply where the supplier of motor vehicles refuses to give independent operators access to any technical information, diagnostic and other equipment, tools, including any relevant software, and training required for the repair and maintenance of these motor vehicles or for the implementation of environmental protection measures. Access has to be given to independent operators in a non-discriminatory and proportionate way. If the relevant item is covered by an intellectual property right or constitutes know-how, access shall not be withheld in any abusive manner.

***If, as a result of a refusal on the part of the supplier, a valid distribution contract is excluded from the exemption, the supplier***

***shall be required to compensate the distributor for the resulting losses.***

*Justification*

Where a failure to enforce the exemption results from an action by the supplier having no connection with the distribution contract, liability in that event needs to be established.

Modification 24

Article 5(a)

(a) any direct or indirect non-compete obligation relating to the sale of ***motor*** vehicles;

(a) any direct or indirect non-compete obligation relating to the sale of ***passenger*** vehicles;

*Justification*

*In the commercial vehicle sector, brand exclusivity should be granted in accordance with the provisions of Regulation 2790/99 on vertical agreements, since there is no reason to treat this subsector differently from other branches, and excessively strict conditions for governing brand exclusivity may actually endanger competition.*

Modification 25

Article 5.2(a) (new)

***By way of derogation from Article 5(e), distributors should enjoy contractual freedom, as soon as economically feasible, to agree to separate brand displays with the supplier (motor vehicle manufacturer). This could include separate show rooms, separate staff, special brand displays etc. Economic feasibility may be examined by an arbitration board.***

*Justification*

*The Commission's idea to allow multi-branding should be endorsed. However, it should also be possible to agree to separate brand displays, since the advantage of this procedure are also obvious. An arbitration board should be set up to prevent any abuse.*

Modification 26

Article 9, paragraph 2, subparagraph (d)

(d) if the market share is initially not more than 30% or 40% respectively but subsequently rises above 35% or 45% respectively, the exemption provided for in Article 2 shall continue to apply for one calendar year following the year in which the level of 30% or 40% respectively was first exceeded;

*(Does not affect English version).*

*Justification*

Modification 27

Article 11 a (new)

***Article 11a***

***The Commission shall draw up and as soon as possible publish a manual setting out general guidelines to provide greater legal certainty for the parties involved.***

*Justification*

*The above action will make the position more certain for the parties involved*



Modification 28  
Article 12

12. The prohibition laid down in Article 81(1) of the EC Treaty shall not apply during the period from 1 October 2002 to 30 September 2003 in respect of agreements already in force on 30 September 2002 which do not satisfy the conditions for exemption provided for in this Regulation but which satisfy the conditions for exemption provided for in Regulation (EC) No 1475/95.

12. The prohibition laid down in Article 81(1) of the EC Treaty shall not apply during the period from 1 October 2002 to 30 September 2003 in respect of agreements already in force on 30 September 2002 which do not satisfy the conditions for exemption provided for in this Regulation but which satisfy the conditions for exemption provided for in Regulation (EC) No 1475/95.

***Rights and obligations which result from a change in the system of the application of the exemption under this Regulation compared to Regulation (EC) No 1475/95 will only become enforceable on 1 October 2003.***

***By way of derogation from Article 14, the provisions of Article 5(f) shall enter into force no sooner than 1 October 2005, and after the Commission has established that the conditions in Article 81(3) of the Treaty will not be fulfilled unless the provisions become applicable.***

*Justification*

*The proposed Regulation not only affects existing agreements, but also creates new rights and obligations for suppliers, distributors and other parties. Those concerned must therefore be given enough time to prepare. A large degree of cross-border competition will be achieved through the other new provisions of the Regulation geared to the liberalisation of car distribution, which will have less negative effects on SMEs. Thus, recourse to forbidding location obligations for dealers should be made dependent on an assessment by the Commission in 2005 whether such a radical measure is really necessary to ensure that the conditions of Art. 81(3) are respected*

9. Instructs its President to forward this resolution to the Council and Commission.

## EXPLANATORY STATEMENT

### 1. Introduction

In less than seven months, on 22 September 2002, the block exemption regulation for the motor vehicle trade will expire. After a lengthy process that began in November 2001 with submission of the – extremely critical – evaluation report on the present block exemption, on 5 February 2002 the Commission presented its draft for their successor. There are perhaps few areas of competition policy that are more controversial or intensively discussed than the future of the motor trade. Parliament has taken part in that debate, most recently with a hearing in the Committee on Economic and Monetary Affairs on 11 September 2001. Interested parties and those affected had a final opportunity on that occasion to discuss their views and expectations in public before the Commission began detailed work on the new regulation. Representatives of manufacturers, consumers, workshops and distributors made good use of the opportunity and showed once again how far apart their expectations were.

Until quite recently it was unclear what direction the Commission intended to take with its new rules. What was clear was that the present system could not continue unchanged.

### 2. The Commission draft

The draft regulation contains revolutionary changes for the motor trade, though the Commission does not go so far as to seek immediate and total liberalisation. The main changes are:

- *Distribution system*: manufacturers must choose between a selective and an exclusive system. In a selective system active sales are permitted and use of the ‘location clause’ is prohibited. This means dealers will in future be able to open branches or showrooms anywhere in the internal market. In an exclusive system dealers are entitled to make passive sales to any consumers who enter their showrooms or contact them. They can also make sales to independent resellers, such as supermarkets or Internet-only dealers. Apart from a ‘black list’ of constraints the Commission will leave it to manufacturers to organise their distribution system as they wish.
- *Multi-branding*: in future manufacturers will be allowed to offer several brands in separate areas of the same showrooms.
- *Linking sales and after-sales service*: the link is severed. Dealers can now offer customer services themselves or subcontract them to a repair workshop authorised by the manufacturer concerned.
- *Access to technical information*: manufacturers must enable independent repairers to have access in usable form to technical information, diagnostic and other equipment and tools, and to the necessary technical training in vehicle maintenance and repair. The number of operators entitled to claim access to technical information is also being extended.
- *Spare parts*: official repairers are able to source spare parts direct from the parts’ manufacturer or independent suppliers (exceptions: warranty, free servicing and vehicle recall work). Nor may manufacturers any longer prevent authorised repairers from selling spares to independent repairers which require them for vehicle repair and maintenance.
- *Stronger commercial independence of dealers and repairers*: on termination of a dealer contract an explanation of the grounds for terminating the agreement is required. Notice of ordinary termination is two years (one year for restructuring the network or payment of

compensation). Disputes are to be put to an independent expert or arbitrator.

The draft BER provides for a general transition period of one year. This means that the present BER would expire as planned on 30 September 2002 and the new one enter into force after the transition period on 1 October 2003.

### **3. Assessment**

In the rapporteur's view the Commission draft regulation should be largely welcomed. It was already clear from the working document of 6 June that allowing the regulation to expire unreplaced, with immediate liberalisation, would cause just as many problems as simply extending the present arrangements<sup>1</sup>. At that stage the rapporteur intended 'to amend some points of the Group Exemption Regulation and to continue with it at least for a given time – say seven years' (page 5). The aim of the framework law for European car sales should – in view of the unequal economic power between manufacturers and dealer/repairers – be to ensure that no party in the motor vehicle industry had an unfair advantage over the others, thus damaging competition. Here it should be borne in mind that the new regulation must ensure that the quality of maintenance and repair, and hence road safety, remains at its present level.

The key points of a future BER, as listed in the working document, included loosening the rules on multi-brand sales and the linkage between sales and servicing, opening up access to technical information and training for independent repairers, and allowing direct advertising outside the contractual area. The Commission proposal has taken up all these points and thus substantially strengthened the hand of dealers and repairers – whether they are dependent or independent.

The possibility of multi-brand sales is a major step forward. Increasing the opportunities for such sales improves market access for new manufacturers and encourages competition. It is an advantage for consumers since it gives them a better overview of the market in one place. Dealers will benefit from this in rural areas, for example, where it is otherwise hard for them to achieve the necessary critical mass of sales.

But the separation of servicing and sales, scrapping a linkage that exists in no other industry, should also be welcomed. Repairers are unlikely to disappear as servicing generally produces much higher returns than new car sales. Independent repairers will in future be able to offer work of greater value. This is ensured by requiring manufacturers to grant them access to technical information, diagnostic and other equipment and tools, and the necessary special training. This will safeguard competition in the industry and open up crucial growth prospects. Greater competition between repairers makes lower repair and maintenance costs more likely. Bearing in mind that such costs may equal or even exceed a car's purchase price during its life, this is a substantial result. And dealers who have already been served notice by manufacturers as part of a process of concentration will also have better entrepreneurial prospects. The rapporteur has always favoured a change in the law on termination of agreements to improve dealers' protection in such cases, so as to give small to medium-sized dealers – who form the majority – greater investment security. The present draft brings that to wish to fruition.

---

<sup>1</sup> PE 304.703, FdR 437745.

The frequently voiced objection that the reform would mean that repairers would die out is, in the rapporteur's opinion, unsustainable. As mentioned earlier, the industry is already going through a period of concentration and restructuring. But that process is taking place irrespective of the BER reform. The Accenture study mentioned in the Commission draft suggests that 15–20 % of dealers will disappear from the market in the next five years. The new BER strengthens the position of dealers and repairers and extends their room for manoeuvre – thus helping them to survive.

Originally the Commission justified scrapping the present BER mainly on the grounds of the large difference in new car prices on the internal market<sup>1</sup>. In countries that impose high taxation and other levies on car sales, manufacturers were clearly setting very low prices. In this way German buyers, for instance, with their high price lists were 'subsidising' the low prices in Denmark. However, the opportunity introduced by the draft regulation, for a Danish dealer to sell his cars at the lower list price in, say, Germany as well by setting up a branch there, will lead not necessarily to lower prices in Germany but to higher prices in the much smaller car market in Denmark. So a general decline in car prices is not necessarily to be expected, but prices will at least come into line in the internal market. We may also assume that there will then finally be some progress with the harmonisation of VAT rates in the internal market and ultimately in the stonewalled plan for a common European VAT system based on the 'country of origin' principle.

Even the new BER does not fully open up access to car sales for supermarkets and Internet dealers. Manufacturers are not compelled to grant them full and free access to their sales network. But the Commission is, all the same, allowing both these sectors to get a foot in the door. The doubts it expresses about giving supermarkets and Internet dealers full access to the sales system are – at least in the medium term – understandable. Internet and dealer-chain sales are clearly bound to increase.

#### **4. Proposals**

However, there are some points in the Commission draft regulation that need improving. It seems desirable, in view of the impact of the changes, to introduce freedom of establishment only after a suitable and clearly defined transitional period. The Commission's proposed one year would seem too short. The opportunity for members of a selective sales system to set up sales and delivery points anywhere in the internal market may indeed threaten the existence of dealers, if they have to face competition in their immediate neighbourhood without preparation and at short notice. Unrestricted freedom of establishment will increase the competitive pressure on the less well-funded small and medium-sized dealers. The rapporteur considers that a two-year transitional period, up to 30 September 2004 for this particular provision, in Article 5(f), would give dealers sufficient time to adapt to these changes.

Secondly, dealers whose agreements manufacturers have already terminated before the present motor vehicle BER expires must also be given effective entrepreneurial prospects. A special solution should be found for dealers in this category.

On the option to choose between selective and exclusive sales, care is needed to ensure that

---

<sup>1</sup> See the Commission's latest report on EU car prices.

the manufacturer's choice of one system or the other must apply throughout Europe. A combination of the two systems should be prohibited.

Other amendments by the rapporteur concern the definition of original spare parts and spares of matching quality. Access to and the use of original spares should be made easier. The same applies to appropriate access to the necessary technical information that the defined interested independent operators should receive from motor vehicle suppliers.

The Commission should in principle be saluted for its courageous approach. The fact that it has not met universal approbation is not surprising. In the interest of consumers and small businesses, as well as the principles of European competition policy, the Commission has chosen a path that removes the failings of the present system and opens up a protected industry, while doing justice to the special position of the motor vehicle product.

16 April 2002

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET**

for the Committee on Economic and Monetary Affairs

on the draft Commission regulation on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle industry (2000/2046(INI))

Draftsman: Maria Berger

### **PROCEDURE**

The Committee on Legal Affairs and the Internal Market appointed Maria Berger draftsman at its meeting of 26 June 2001.

It considered the draft opinion at its meetings of 19 February 2002, 19 March 2002 and 16 April 2002

At the last meeting it adopted the following amendments unanimously.

The following were present for the vote: Giuseppe Gargani chairman; Ioannis Koukiadis, vice-chairman; Maria Berger, draftsman; Paolo Bartolozzi, Ward Beysen, Isabelle Caullery (for Brian Crowley), Bert Doorn, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Heidi Anneli Hautala, Renzo Imbeni (for Carlos Candal pursuant to Rule 153(2)), Kurt Lechner, Klaus-Heiner Lehne, Toine Manders, Arlene McCarthy, Manuel Medina Ortega, Marianne L.P. Thyssen, Rijk van Dam (for Ole Krarup), Rainer Wieland and Stefano Zappalà.

## SHORT JUSTIFICATION

The approach that the Commission has chosen for submitting a new motor vehicle block exemption regulation (BER) should in principle be welcomed. The alternatives – continuing with the present arrangements unchanged, or discarding them without replacement and applying the general BER in all cases – would not have done the problems justice. But even though the Commission is consulting Parliament ‘voluntarily’ the question arises as to whether rules that have such far-reaching consequences for industry, trade and consumers, and are entirely comparable with the process of liberalisation in the telecommunications and energy sector, should not in future be subject to the codecision procedure.

From the point of view of the Committee on Legal Affairs and the Internal Market, the Commission proposals should be largely welcomed. In future manufacturers and suppliers will no longer be free to impose excessive restrictions and dependencies on dealers. Behaviour that is incompatible with the principles of the single market and competition will no longer be tolerated by the BER to the same degree. Indeed, the Commission has had to conduct competition proceedings against some manufacturers in order to tackle practices in the motor trade that were not compatible with those principles. Specifically, the following changes should be particularly welcomed: dealers can set their own prices, suppliers can now only set maximum prices or recommended prices, which cannot be used as minimum or fixed prices; dealers are free to operate their own repairs or nominate an approved repairer for their customers; cross-supplies between dealers and/or repairers are permissible; multi-branding for sales and repairs; access to technical information, diagnostic and other equipment of independent operators (repairers, breakdown services, motoring organisations etc); liberalisation of the trade in authentic spares; entitlement for component suppliers to apply their own trademarks and brands; no freedom to apply indirect or direct restrictions on competition; freedom to permit leasing services of dealers, and so on. These and other proposed changes should ensure that the internal market principles apply to the motor vehicle industry and enable the consumer to profit from improved competition. From the legal point of view the proposed solutions to the problems of copyright and design protection law are particularly welcome.

The regulation permits on principle both ‘qualitative selective distribution’ and ‘quantitative selective distribution’, and exclusive distribution. But in the case of selective distribution the present ‘territorial protection’ has been dropped. From one point of view this is a decisive step for competition and the fulfilment of declared objectives. But it also raises fears that strongly funded dealers and dealer networks will force smaller firms out of the market and strengthen a process of concentration that will not necessarily result in more competition at the end of the day. And the question of investment protection when agreements are terminated remains unsolved, even if the introduction of a two-year period of notice of termination, with a requirement to give reasons and a binding expert and arbitration clause, deserves support. In view of the fact that far-reaching changes have been introduced in other economic sectors with a substantially longer introductory time-scale, in the interest of maintaining confidence and legal certainty a rather longer transition period leading to full application would be appropriate.

## AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1 Recital 8

(8) It can be presumed that, where a suppliers share of the relevant market does not exceed the thresholds provided for in the general conditions for the application of this Regulation, vertical agreements which do not contain certain types of severely anti-competitive restraints generally lead to an improvement in production or distribution and allow consumers a fair share of the resulting benefits. This sector specific Regulation contains stricter rules than those provided for by Commission Regulation 2790/99, and it can therefore in particular be presumed that in general distribution agreements have such advantages where the supplier concerned has a market share ***of up to 30%, or of up to 40% in case of quantitative selective distribution for the sale of new motor vehicles.*** In the case of vertical agreements containing exclusive supply obligations, it is the market share of the buyer which is relevant for determining the overall effects of such vertical agreements on the market.

(8) It can be presumed that, where a suppliers share of the relevant market does not exceed the thresholds provided for in the general conditions for the application of this Regulation, vertical agreements which do not contain certain types of severely anti-competitive restraints generally lead to an improvement in production or distribution and allow consumers a fair share of the resulting benefits. This sector specific Regulation contains stricter rules than those provided for by Commission Regulation 2790/99, and it can therefore in particular be presumed that in general distribution agreements have such advantages where the supplier concerned has a market share of up to 40%. In the case of vertical agreements containing exclusive supply obligations, it is the market share of the buyer which is relevant for determining the overall effects of such vertical agreements on the market.

### *Justification*

*The proposal for multiple thresholds is unnecessarily complicated, and will not make the regulation more effective in dealing with market abuses.*

---

<sup>1</sup> OJ C 67, 16.03.2002, p. 06.



Amendment 2  
Recital 10 a (new)

***(10a) In certain limited conditions the notice should be reducible to no less than one year. In these cases the dealer or repairer should in any case always be entitled to claim appropriate compensation.***

*Justification*

*Reorganising of the network by the supplier is not part of a dealer's or repairer's liability, whose losses in such a case would be just as entitled to compensation as in the case of Article 3(6)(a).*

Amendment 3  
Recital 18

(18) Vertical agreements that do not oblige the motor vehicle distributors and repairers within a supplier's distribution system to honour warranties, perform free servicing and carry out recall work in respect of motor vehicles sold by the manufacturer in question anywhere in the common market amount to an indirect restriction of sales. Furthermore, in order to allow sales by motor vehicle distributors to end users throughout the common market, this Regulation does not cover distribution agreements which do not require the repairers within the supplier's system to carry out repair and maintenance services for the contract goods and corresponding goods wherever these goods are sold in the common market.

(18) Vertical agreements that do not oblige the motor vehicle distributors and repairers within a supplier's distribution system to honour warranties, perform free servicing and carry out recall work in respect of motor vehicles sold by the manufacturer in question anywhere in the common market amount to an indirect restriction of sales. Furthermore, in order to allow sales by motor vehicle distributors to end users throughout the common market, this Regulation does not cover distribution ***and servicing*** agreements which do not require the ***distributors and*** repairers within the supplier's system to carry out repair and maintenance services for the contract goods and corresponding goods wherever these goods are sold in the common market.

*Justification*

*This amendment seeks to amplify the text. The thrust of the regulation requires both distribution (dealers) and repair and maintenance (repairers) to be covered.*

Amendment 4  
Recital 21

(21) Motor vehicles are expensive and technically complex mobile goods which require repair and maintenance services at regular and irregular intervals. However, it is not indispensable for distributors of new motor vehicles to also carry out repair and maintenance services. The legitimate interest of suppliers and consumers can be fully satisfied if the distributor subcontracts these services, including the honouring of warranties, free servicing and recall work, to a repairer or to a number of repairers within the distribution system of the supplier ***and if the consumer is duly informed about the location of the official repairer in case of subcontracting***. Nor is it necessary, in order to adequately provide for repair and maintenance services, for repairers to also sell new motor vehicles. This Regulation therefore does not cover vertical agreements containing any direct or indirect obligation or incentive which leads to the linking of sales and after sales service activities or which makes the performance of one of these activities dependent on the performance of the other; this is in particular the case where the remuneration of the distributors or authorised repairers relating to the purchase or sale of goods or services necessary for one activity is made dependent on the sales of goods or services relating to the other activity, or where all such goods are indistinctly aggregated into a single remuneration or discount system.

(21) Motor vehicles are expensive and technically complex mobile goods which require repair and maintenance services at regular and irregular intervals. However, it is not indispensable for distributors of new motor vehicles to also carry out repair and maintenance services. The legitimate interest of suppliers and consumers can be fully satisfied if the distributor subcontracts these services, including the honouring of warranties, free servicing and recall work, to a repairer or to a number of repairers within the distribution system of the supplier ***within the distributor's authorised area of operation, provided that the same distributor directly owns at least one main after-sales outlet in reasonable proximity to his main sales outlet, so that he can effectively ensure supervision and remain responsible, vis-à-vis the manufacturer, for adequate territorial coverage and for supervision of the other authorised repairers in his area of operation***. Nor is it necessary, in order to adequately provide for repair and maintenance services, for repairers to also sell new motor vehicles. This Regulation therefore does not cover vertical agreements containing any direct or indirect obligation or incentive which leads to the linking of sales and after sales service activities or which makes the performance of one of these activities dependent on the performance of the other; this is in particular the case where the remuneration of the distributors or authorised repairers relating to the purchase or sale of goods or services necessary for one activity is made dependent on the sales of goods or services relating to the other activity, or where all such goods are indistinctly aggregated into a single remuneration or discount system.

## Justification

*For consumers, it is important to have after-sales and repair services located close by, and likewise to have adequate coverage throughout Europe when they travel. This requirement is crucial with regard to commercial vehicles, which constitute capital goods. It is therefore necessary to amend the proposal for a regulation to allow distributors who intend to subcontract after-sales services to repairers to determine their location. Only in this way will it be possible to guarantee consumers a network of 'authorised repairers' distributed evenly throughout the European Union (including in rural and outlying areas), so that all makes and models of vehicle can continue to benefit from an efficient after-sales network based on common standards.*

## Amendment 5

### Recital 25

***(25) In order to protect effective competition on the market for repair and maintenance services and to prevent foreclosure of independent repairers, manufacturers must allow interested independent operators to have full access to all technical information, diagnostic and other equipment, tools, including all relevant software, and training required for the repair and maintenance of motor vehicles. Independent operators who must be allowed such access include independent repairers, manufacturers of repair equipment or tools, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services and operators offering training for repairers.*** The conditions of access should in particular not discriminate between authorised and independent operators; access should be given ***in due course upon request; the price for the information should take account of the extent to which the independent operator uses it.*** A manufacturer should give independent repairers access to technical information on new motor vehicles at the same time as such access is given to its authorised repairers and should not oblige an independent repairer to purchase more than the necessary information needed for the

(25) The conditions of access should in particular not discriminate between authorised and independent operators; access should be given ***in a usable format after market introduction of the model, as soon as possible and where applicable at fair and appropriate prices.*** A manufacturer should give independent repairers access to technical information on new motor vehicles at the same time as such access is given to its authorised repairers and should not oblige an independent repairer to purchase more than the necessary information needed for the type of repair or maintenance work to be executed. It is, however, legitimate and proper for suppliers to withhold access to technical information which might allow a third party to bypass or disarm on-board anti-theft devices, ***reprogram a vehicle's electronic control systems or modify speed limiters.*** Moreover, the legitimate interest of the motor vehicle manufacturer to decide the mode of exploitation of its intellectual property rights and know-how has to be taken into account when granting licences to third parties. However, these rights must be exercised in a manner which avoids any type of abuse.

type of repair or maintenance work to be executed. It is, however, legitimate and proper for suppliers to withhold access to technical information which might allow a third party to bypass or disarm on-board anti-theft devices. Moreover, the legitimate interest of the motor vehicle manufacturer to decide the mode of exploitation of its intellectual property rights and know-how has to be taken into account when granting licences to third parties. However, these rights must be exercised in a manner which avoids any type of abuse.

#### *Justification*

*To prevent indirect discrimination in this case, particularly against small independent repairers, the conditions for access to technical information should be more precisely established. (Technical information should not have to be disclosed if its disclosure would make undesirable manipulation possible.) There should also be provision to bypass specific anti-theft protection to allow intervention from outside the car in emergency cases, in the interest of motorists.*

#### Amendment 6 Recital 26

(26) In order to ensure access to or to prevent collusion on the relevant markets and to give distributors opportunities to sell vehicles of brands from two or more manufacturers, that are not connected undertakings, certain specific conditions are to be attached to the block exemption. To this end, non-compete obligations should not be exempted. In particular, this Regulation does not cover any prohibition on sales of competing makes. This is without prejudice to the ability of the manufacturer to **require** the distributor **to display the vehicles in brand-specific areas of the showroom in order to avoid brand confusion. However, further requirements, such as an obligation to employ brand specific sales personnel,**

(26) In order to ensure access to or to prevent collusion on the relevant markets and to give distributors opportunities to sell vehicles of brands from two or more manufacturers, that are not connected undertakings, certain specific conditions are to be attached to the block exemption. To this end, non-compete obligations should not be exempted. In particular, this Regulation does not cover any prohibition on sales of competing makes. This is without prejudice to the ability of the manufacturer to **agree with** the distributor **operating conditions for the representation of different brands separately, taking into account commercial feasibility and market conditions.** Similarly, an obligation to display the full

*are considered to be non-exempted indirect non-compete obligations.* Similarly, an obligation to display the full range of motor vehicles constitutes a non-exempted indirect non-compete obligation if it makes the sale or display of vehicles manufactured by different undertakings impossible or unreasonably difficult.

range of motor vehicles constitutes a non-exempted indirect non-compete obligation if it makes the sale or display of vehicles manufactured by different undertakings impossible or unreasonably difficult. ***In cases of dispute between manufacturer and distributor on the conditions required for separate brand representation, independent arbitration on the contract terms should apply.***

#### *Justification*

*Distributors must have a contractual right to sell more than one brand. They should retain the contractual freedom to enter into agreements with suppliers on the appropriate operating conditions for separate brand representation, based on commercial feasibility and market conditions. Regulators should not be prescribing detailed operating requirements for any industry - these should be governed by contract and open to arbitration. Consumers will still benefit from a better choice of services made possible by combining specialisation and competition between the brands.*

#### Amendment 7 Recital 28

(28) In addition, specific conditions are required to exclude certain restrictions in a selective distribution system from being covered by this Regulation. This applies in particular to obligations which have the effect of preventing the members of a selective distribution system from selling the brands of particular competing suppliers, which could easily lead to foreclosure of certain brands. Two further conditions are necessary in order to create opportunities for distributors who wish to seize market opportunities outside their place of establishment, for market integration and in order to increase price competition and choice of consumers where suppliers have a certain overall presence. To this end a restriction imposed on the authorised distributor of passenger cars as to its ability to establish itself in any Member State, is excluded from the cover of the Regulation. Moreover, for suppliers of new motor vehicles other than passenger cars, a

(28) In addition, specific conditions are required to exclude certain restrictions in a selective distribution system from being covered by this Regulation. This applies in particular to obligations which have the effect of preventing the members of a selective distribution system from selling the brands of particular competing suppliers, which could easily lead to foreclosure of certain brands. Two further conditions are necessary in order to create opportunities for distributors who wish to seize market opportunities outside their place of establishment, for market integration and in order to increase price competition and choice of consumers where suppliers have a certain overall presence. To this end a restriction imposed on the authorised distributor of passenger cars as to its ability to establish itself in any Member State, is excluded from the cover of the Regulation, ***provided that a review in 2005 shows that the conditions of Article 81(3) cannot be***

condition limiting the duration of restrictions on the place of establishment of a distributor to five years is necessary in order to allow both parties to adapt their agreements to changing market conditions.

***fulfilled without such an exclusion; an exclusion can therefore be considered, at the earliest, after the completion of the review. However, because of the excessive risk, which the application of such a provision might produce for small and medium-sized distributors, the Commission decided to suspend this exclusion from the exemption until a review in 2005, which should reveal whether the conditions in article 81, 3 will not be fulfilled unless the provision becomes applicable.*** Moreover, for suppliers of new motor vehicles other than passenger cars, a condition limiting the duration of restrictions on the place of establishment of a distributor to five years is necessary in order to allow both parties to adapt their agreements to changing market conditions.

#### *Justification*

*Recital 28 should be amended in line with the draftsman's Amendments 6 and 7.*

#### Amendment 8 Recital 33

***(33) In order to strengthen supervision of parallel networks of vertical agreements which have similar restrictive effects and which cover more than 50 % of a given market, the Commission may declare this Regulation inapplicable to vertical agreements containing specific restraints relating to the market concerned, thereby restoring the full application of Article 81 to such agreements.***

***Deleted***

#### *Justification*

*The specific legislation on motor vehicles is required because this sector is served, world-wide, by parallel networks, but with high level of inter-distribution competition. It is illogical to include this provision, which effectively gives the Commission a free hand to impose new regulations at any time.*

Amendment 9  
Article 1, subparagraph (u a) (new)

***(ua) ‘Technical information’ is information necessary for the inspection, regular supervision, diagnosis, maintenance and repair of a vehicle, which manufacturers give to their dealer and repair network. It includes information necessary for access to a vehicle’s electronic control and diagnosis systems, and the reprogramming of such systems in accordance with the supplier’s guidelines, repair and training instructions and information on the design of diagnostic and other equipment and tools.***

***‘Usable format’ means that all diagnostic signals and data flow information for electronic control systems, including all error codes and freeze-frame data used, must be manufactured in accordance with the industrial standards laid down in the Community.***

***‘Unrestricted access’ means the availability of all data via a serial interface, including all error codes and freeze-frame data required for vehicle inspection, diagnosis, maintenance and repair, particularly access independent of an access code that only the manufacturer can supply or of a comparable measure, and particularly access that permits assessment of the resulting data without special decoding information or equipment, unless such information or equipment is standardised.***

*Justification*

*To take account of the requirements of Article 4(2) without allowing circumvention, some of the concepts used there need to be defined more precisely.*

Amendment 10  
Article 3, paragraphs 1 to 4

1. Subject to paragraph 2, 3, 4, 5, 6 and 7 of this Article, the exemption provided for in Article 2 shall apply on condition that the suppliers market share on the relevant market on which it sells the new motor vehicles, spare parts for motor vehicles or repair and maintenance services does not exceed **30%**.

**2. By way of exception to paragraph 1 the market share threshold for the application of Article 2 shall be 40% for agreements establishing quantitative selective distribution systems for the sale of new motor vehicles.**

3. The market share thresholds of paragraph 1 and 2 shall not apply to agreements establishing qualitative selective distribution systems.

4. In the case of vertical agreements containing exclusive supply obligations, the exemption provided for in Article 2 shall apply on condition that the market share held by the buyer does not exceed **30%** of the relevant market on which it purchases the contract goods or services.

1. Subject to paragraph 2, 3, 4, 5, 6 and 7 of this Article, the exemption provided for in Article 2 shall apply on condition that the suppliers market share on the relevant market on which it sells the new motor vehicles, spare parts for motor vehicles or repair and maintenance services does not exceed **40%**.

*Deleted*

2. The market share thresholds of paragraph 1 and 2 shall not apply to agreements establishing qualitative selective distribution systems.

3. In the case of vertical agreements containing exclusive supply obligations, the exemption provided for in Article 2 shall apply on condition that the market share held by the buyer does not exceed **40%** of the relevant market on which it purchases the contract goods or services.

#### *Justification*

*The proposal for multiple thresholds is unnecessarily complicated, and will not make the regulation more effective in dealing with market abuses. See also amendment 7.*



Amendment 11  
Article 3, subparagraph 6

6. The exemption provided for in Article 2 shall apply on condition that the vertical agreement concluded with a distributor or repairer provides that if a supplier wishes to give notice of termination, the period of notice for regular termination of the agreement has to be at least two years for both parties; this period is reduced to at least one year where:

(a) the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or

(b) the supplier *terminates the agreement where it is necessary to reorganise the whole or a substantial part of the network.*

6. The exemption provided for in Article 2 shall apply on condition that the vertical agreement concluded with a distributor or repairer provides that if a supplier wishes to give notice of termination, the period of notice for regular termination of the agreement has to be at least two years for both parties; this period is reduced to at least one year where:

(a) the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or

(b) the supplier *finds it necessary to reorganise the whole or a substantial part of the network **and appropriate compensation is to be paid to the dealer or repairer.***

*Justification*

*Reorganising of the network by the supplier is not part of a dealer's or repairer's liability, whose losses in such a case would be just as entitled to compensation as in the case of Article 3(6)(a).*

Amendment 12  
Article 4, paragraph 2

2. The exemption provided for in Article 2 shall not apply where the supplier of motor vehicles refuses to give independent operators access to any technical information, diagnostic and other equipment, tools, including any relevant software, and training required for the repair and maintenance of these motor vehicles or for the implementation of environmental protection measures. Access has to be given to independent operators in

2. The exemption provided for in Article 2 shall not apply where the supplier of motor vehicles refuses to give independent operators **unrestricted** access to any technical information, diagnostic and other equipment, tools, including any relevant software, and training required for the repair and maintenance of these motor vehicles or for the implementation of environmental protection measures. Access has to be given to independent operators

a non-discriminatory and proportionate way. If the relevant item is covered by an intellectual property right or constitutes know-how, access shall not be withheld in any abusive manner.

***without delay, in a usable format and*** in a non-discriminatory and proportionate way. If the relevant item is covered by an intellectual property right or constitutes know-how, access shall not be withheld in any abusive manner.

*Justification*

*To take account of the requirements of Article 4(2) without allowing circumvention, some of the concepts used there need to be defined more precisely.*

Amendment 13  
Article 5, point f

***(f) any direct or indirect obligation on any member of a selective distribution system for the distribution of passenger cars limiting its ability to establish sales or delivery outlets or warehouses at other locations within the common market;***

***Deleted***

*Justification*

*Prohibiting the location clause may lead to situations in which powerful financial groups with a selective distribution agreement are free in all circumstances to open up sales or delivery outlets anywhere and to pursue a sales policy aimed at squeezing SMEs out of the market, which is ultimately not in the interests of freedom of choice for consumers.*

Amendment 14  
Article 5, point g

***(g) any direct or indirect obligation within a selective distribution system which has a duration exceeding five years and which restricts the location of the establishment of a distributorship for motor vehicles other than passenger cars;***

***Deleted***

*Justification*

*By analogy with Amendment 12.*

Amendment 15  
Article 5, point h

(h) any direct or indirect obligation as to the place of establishment of an authorised repairer.

(h) any direct or indirect obligation as to the place of establishment of an authorised repairer. ***This shall not affect Article 4(1)(g).***

*Justification*

*If a distributor subcontracts maintenance and repair services to authorised repairers, in the interests of consumers the manufacturer should be permitted to stipulate that at least one authorised repairer must be located in the vicinity of the distributor.*

Amendment 16  
Article 8, paragraph 1

***1. Pursuant to Article 1(a) of Regulation No 19/65/EEC, the Commission may by regulation declare that, where parallel networks of similar vertical restraints cover more than 50 % of a relevant market, this Regulation shall not apply to vertical agreements containing specific restraints relating to that market.***

***Deleted***

*Justification*

*The specific legislation on motor vehicles is required because this sector is served, world-wide, by parallel networks, but with high levels of inter-distributor competition. It is illogical to include this provision, which effectively gives the Commission a free hand to impose new regulation at any time.*

Amendment 17  
Article 8, paragraph 2

***2. A regulation pursuant to paragraph 1 shall not become applicable earlier than one year following its adoption.***

***Deleted***

*Justification*

*The specific legislation on motor vehicles is required because this sector is served, world-wide, by parallel networks, but with high levels of inter-distributor competition. It is illogical to include this provision, which effectively gives the Commission a free hand to impose new*

*regulation at any time.*

#### Amendment 18

##### Article 12

The prohibition laid down in Article 81(1) of the EC Treaty shall not apply during the period from 1 October 2002 to 30 September 2003 in respect of agreements already in force on 30 September 2002 which do not satisfy the conditions for exemption provided for in this Regulation but which satisfy the conditions for exemption provided for in Regulation (EC) No 1475/95.

The prohibition laid down in Article 81(1) of the EC Treaty shall not apply during the period from 1 October 2002 to 30 September 2003 in respect of agreements already in force on 30 September 2002 which do not satisfy the conditions for exemption provided for in this Regulation but which satisfy the conditions for exemption provided for in Regulation (EC) No 1475/95.

***Irrespective of Article 14 the provisions of Article 5(f) shall enter into force no sooner than 1 October 2005, and after the Commission has established that the conditions in Article 81(3) of the Treaty will not be fulfilled unless the provisions become applicable.***

#### *Justification*

*In the interest of maintaining confidence and legal certainty there should be a longer period of adjustment for the loss of territorial protection. This should also be made dependent on assessment by the Commission.*

#### Amendment 19

##### Article 12, paragraph 2 (new)

The prohibition laid down in Article 81(1) of the EC Treaty shall not apply during the period from 1 October 2002 to 30 September 2003 in respect of agreements already in force on 30 September 2002 which do not satisfy the conditions for exemption provided for in this Regulation but which satisfy the conditions for exemption provided for in Regulation (EC) No 1475/95.

***1.*** The prohibition laid down in Article 81(1) of the EC Treaty shall not apply during the period from 1 October 2002 to 30 September 2003 in respect of agreements already in force on 30 September 2002 which do not satisfy the conditions for exemption provided for in this Regulation but which satisfy the conditions for exemption provided for in Regulation (EC) No 1475/95.

***(2) Rights and obligations which result from a change in the system of the application of the exemption under this Regulation compared to Regulation (EC) No 1475/95 will become enforceable on 1 October 2003.***

*Justification*

*A phased transition is necessary because the proposed regulation does not only affect existing agreements but also creates new rights and obligations for suppliers, distributors, repairers, and other parties.*

*In many instances, there could be a conflict between the old and the new regime. For example, if a supplier appointed a new authorised repairer – which he would be obliged to do if the repairer met the qualitative selection criteria – this would mean a breach of his agreement with his existing repairer who had been given an exclusive territory under the (still valid) agreement based on the old regime.*

Amendment 20  
Article 13

The Commission will draw up a report on the evaluation of this Regulation not later than 31 May **2008**.

The Commission will draw up a report on the evaluation of this Regulation not later than 31 May **2005**.

*Justification*

*In view of the expectation of technological developments which may shortly lead to market restrictions and of the amendment to Article 12 here proposed, it is desirable to bring forward the Commission report.*

**AMENDMENT 21** to the motion for a resolution

Paragraph 1 a (new)

- 1a.** *Reminds the Commission that, to be effective, regulations must be clear, unambiguous and enforceable; is very concerned that the draft proposal is too complicated and unclear in its intentions; is surprised that further guidelines, not yet available, will also be required to interpret these proposals;*

*Justification*

*Additional resolution points to be inserted to reinforce concerns expressed by the Committee on Legal Affairs and the Internal Market. To be inserted before the rapporteur's amendments to the draft regulation.*

**AMENDMENT 22** to the motion for a resolution

Paragraph 1 b (new)

- 1b.** *Considers that over-complex regulation, and uncertainties over its interpretation, works against the interest of consumers and SMEs and favours players with large resources; insists that the Commission must re-evaluate its proposals if the real benefits for consumers are to be delivered quickly and effectively;*

*Justification*

*Additional resolution points to be inserted to reinforce concerns expressed by the Committee on Legal Affairs and the Internal Market. To be inserted before the rapporteur's amendments to the draft regulation.*

**AMENDMENT 23** to the motion for a resolution

Paragraph 1 c (new)

- 1c.** *Shares the Commission's view, as set out in its explanatory document, that independent dealers, under fair contract terms with car manufacturers, should be encouraged to compete strongly, and to maximise customer satisfaction.*

*Justification*

*Additional resolution points to be inserted to reinforce concerns expressed by the Committee on Legal Affairs and the Internal Market. To be inserted before the rapporteur's amendments to the draft regulation.*

**AMENDMENT 24** to the motion for a resolution

Paragraph 1 d (new)

- 1d. Notes that in the USA, where a strong competitive car market environment is apparent, dealers are allowed franchise contract terms that safeguard their investment and provide them with a stable base for market expansion; asks the Commission to justify its rejection of a similar approach for European regulation;***

*Justification*

*Additional resolution points to be inserted to reinforce concerns expressed by the Committee on Legal Affairs and the Internal Market. To be inserted before the rapporteur's amendments to the draft regulation.*

**AMENDMENT 25** to the motion for a resolution

Paragraph 1 e (new)

- 1e. Considers that the explanatory statements in the draft regulation - particularly those suggesting that car manufacturers can keep control over the size, density and composition of their dealer networks - are inconsistent with the regulatory proposals to disallow any form of 'location clause'; calls on the Commission to align its regulatory strategy statement with its legislative proposals;***

*Justification*

*Additional resolution points to be inserted to reinforce concerns expressed by the Committee on Legal Affairs and the Internal Market. To be inserted before the rapporteur's amendments to the draft regulation.*

**AMENDMENT 26** to the motion for a resolution

Paragraph 1 f (new)

***1f. Calls on the Commission to make an early report on car sales tax discrepancies between EU Member States, their impact on car prices and the means of creating a true internal market;***

*Justification*

*Additional resolution points to be inserted to reinforce concerns expressed by the Committee on Legal Affairs and the Internal Market. To be inserted before the rapporteur's amendments to the draft regulation.*

**AMENDMENT ORAL 27** to the motion for a resolution  
by Maria Berger

Paragraph 1 g (new)

***1g Calls on the Convention and the Intergovernmental Conference to ensure that regulations such as this are subject to the codecision procedure in future;***