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POLICY DEPARTMENT
ECONOMIC AND SCIENTIFIC POLICY **A**



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**Internal Market and
Consumer Protection**



**Access to repair
and maintenance
information**

IMCO



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT A: ECONOMIC AND SCIENTIFIC POLICY
INTERNAL MARKET AND CONSUMER PROTECTION

Access to repair and maintenance information

BRIEFING PAPER

Abstract

The objective of this briefing paper is (i) to provide an overview of the relevant market conditions in the motor vehicles (M category), the powered two-wheelers (PTW; L-category) and the tractor (T category) sectors and (ii) to assess whether the requirements for access to Repair and Maintenance Information (RMI) within the proposals for Regulations on motorcycles 2010/0271(COD) (COM(2010)542) and tractors 2010/0212(COD) (COM(2010)395) require reconsideration in relation to their policy objective.

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LIST OF ABBREVIATIONS

ACEA	European Automobile Manufacturers Association
ACEM	European Association of Motorcycle Manufacturers – The Motorcycle Industry in Europe
BOVAG	Dutch association of independent motor vehicle dealers and repairers
CECRA	European Council for Motor Trades and Repairs
CEMA	European Committee of associations of manufacturers of Agricultural Machinery
CJEU	Court of Justice of the European Union
CLEPA	European Association of Automotive Suppliers
EC	European Commission
EGEA	European Garage Equipment Association
EU	European Union
FIGIEFA	Internationale des Grossistes Importateurs et Exportateurs en Fournitures Automobiles – Automotive Aftermarket Distributors
M Category	Motor vehicles
OASIS	Organization for the Advancement of Structured Information Standards
OBD	On Board Diagnostics
OJ	Official Journal of the European Union
PTW; L-Category	Powered two-wheelers
RMI	Repair and Maintenance Information
T Category	Tractors
TFEU	Treaty on the Functioning of the European Union
TSB	Technical Service Bulletin

EXECUTIVE SUMMARY

The objective of this study is (i) to provide an overview of the relevant market conditions in the motor vehicles (M category), the powered two-wheelers (PTW; L-category) and the tractor (T category) sectors and (ii) to assess whether the requirements for access to Repair and Maintenance Information (hereinafter referred to as "RMI") within the proposals for Regulations on motorcycles 2010/0271 (COD) (COM(2010)542) and tractors 2010/0212 (COD) (COM(2010)395) require reconsideration in relation to their policy objective.

The research has been conducted by primarily following two lines of work. First, information related to the market conditions has been obtained by carrying out stakeholder consultation, so as to know first-hand the different views of interested parties. Interviews have also been held with the most significant categories of stakeholders namely manufacturers, suppliers and repairers. Secondly, the research has also been conducted using existing literature, data and reports.

The minimum requirements that manufacturers must fulfill with respect to access to information in the repair and maintenance market, are generally quite similar across the three categories of vehicles. It seems however, that important differences in the three concerned aftermarkets in terms of, among other factors, type of network, different weight of independent repairers, type of vehicles concerned and requirements arising therefrom, suggest a tailor-made legislation for access to RMI for powered two-wheelers and the tractor sector.

For instance, the very fragmented aftermarket for motorcycle repairers, where multi brand repairers mainly operate opposed to the situation in the tractors aftermarket, where almost every single repairer belongs to an authorised network. Generally speaking, the industry regrets that the approach of the European Commission is one which appears to be a mere reproduction of the regime applicable to the motor vehicle sector (M Category) and does not take into account the specificities of the two other markets.

Nevertheless, the experience acquired with M Category shows that effective access to vehicle technical information (as laid down in the Type approval Regulations) contributes to the maintenance of effective competition in the market (as provided for in Article 101 TFEU). Due to their different business mode, independent repairers might constitute a major competitive force in the market for repair and maintenance. Therefore, by establishing an obligation on manufacturers to provide those independent operators with the necessary technical information for repairing their vehicles, as well as the conditions determining how the information shall be disclosed (adapted to the specificities of T Category and PTW/L Category vehicles and aftermarkets), Type approval Regulations may constitute an instrument which supports effective competition in the market.

1. LEGAL FRAMEWORK

KEY FINDINGS

- For M category vehicles, access to RMI is specifically regulated by (i) Type approval Regulations and (ii) specific EU Competition rules.
- As regards PTW-L Category and T Category vehicles, the general EU Competition law framework is applicable.
- Is Article 114 TFEU the adequate legal basis for adopting the Draft Type approval Regulations under scrutiny? The CJEU has recognised that Article 114 TFEU may be used as legal basis for acts aiming not only at eliminating obstacles to the internal market, but also at removing appreciable distortions of competition.

1.1. Overview

In order to provide a clear picture of the existing EU legal framework, this section is set out by following the three categories of vehicles in consideration: M category, PTW; L-category and T category.¹ It will also be taken into account that access to RMI may be affected by two categories of legal instruments, i.e. Type approval Regulations and Competition rules.

1.2. M Category

1.2.1. Type approval Regulations

As regards access to technical information for independent operators, the key provisions are included in the following technical EU Type approval Regulations:

Regulation (EC) No 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information.²

Regulation (EC) No 692/2008 which implements and amends Regulation (EC) No 715/2007.³

Regulation (EC) No 595/2009 on type approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information.⁴

¹ Motor vehicles with at least four wheels used for the carriage of Passengers are M category vehicles. L category includes: powered two-, three- and four-wheel vehicles, as well as powered cycles, two- and three-wheel mopeds, two- and three-wheel motorcycles, motorcycles with side-cars, light and heavy on-road quads, and light and heavy mini-cars. The following vehicles are included in T category vehicles: tractors (categories T and C), trailers (category R), interchangeable towed equipment (category S) and mobile machinery (category U).

² Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information OJ L 171, 29.6.2007, p. 1–16.

³ Commission Regulation (EC) No 692/2008 of 18 July 2008 implementing and amending Regulation (EC) No 715/2007 of the European Parliament and of the Council on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information OJ L 199, 28.7.2008, p. 1–136.

Regulation 715/2007, as implemented by Regulation 692/2008, establishes an obligation on vehicle manufacturers to provide independent operators with unrestricted and standardised access to vehicle repair and maintenance information on passenger models launched from 1 September 2009 onwards. Regulation 595/2009 provides for the same obligation with regard to heavy duty vehicles put on the market from 1 January 2013.

Pursuant to Article 6.1 of Regulation 715/2007, vehicle repair and maintenance information shall be submitted in a consistent manner, initially in accordance with the technical requirements of the OASIS format.⁵ OASIS (Organization for the Advancement of Structured Information Standards) is a not-for-profit consortium that drives the development, convergence and adoption of open standards for the global information society.⁶ With regard to motor vehicle technical information, several stakeholders including car manufacturers and parties such as CECRA, developed a standard format to enable access to emission-related repair, diagnostic and technical information with respect to the vehicles covered by the scope of Directive 70/220/EEC. This work was completed in June 2003.⁷

In particular, according to Article 6.2 of Regulation 715/2007, car manufacturers shall provide access to the following information:

- a) an unequivocal vehicle identification;
- b) service handbooks;
- c) technical manuals;
- d) component and diagnosis information (such as minimum and maximum theoretical values for measurements);
- e) wiring diagrams;
- f) diagnostic trouble codes (including manufacturer specific codes);
- g) the software calibration identification number applicable to a vehicle type;
- h) information delivered by means of, proprietary tools and equipment; and
- i) data record information and two-directional monitoring and test data.

1.2.2. Competition law

Currently, the motor vehicle industry is subject to specific competition rules which differ from the general Competition law framework applicable to supply and distribution agreements in all other economic activities. Two legal instruments set up this special Competition law regime:

⁴ Regulation (EC) No 595/2009 of the European Parliament and of the Council of 18 June 2009 on type approval of motor vehicles and engines with respect to emissions from heavy duty vehicles (Euro VI) and on access to vehicle repair and maintenance information and amending Regulation (EC) No 715/2007 and Directive 2007/46/EC and repealing Directives 80/1269/EEC, 2005/55/EC and 2005/78/EC OJ L 188, 18.7.2009, p. 1–13.

⁵ According to Recital 8 of Regulation 715/2007, it is appropriate to initially require the use of the technical specifications of the OASIS format and to ask the Commission to request CEN/ISO to further develop this format into a standard with a view to replacing the OASIS format in due course.

⁶ www.oasis-open.org/org

⁷ This “OASIS format” refers to the technical specifications of OASIS Document SC2-D5, Format of Automotive Repair Information, version 1.0, 28 May 2003 (available at:

www.oasiso-pen.org/committees/download.php/2412/Draft%20Committee%20Specification.pdf)

and of Sections 3.2, 3.5, 3.6, 3.7 and 3.8 of OASIS Document SC1-D2, Autorepair Requirements Specification, version 6.1, dated 10.1., using only open text and graphic formats.

Commission Regulation (EU) No 461/2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union (“TFEU”) to categories of vertical agreements and concerted practices in the motor vehicle sector.⁸

This Regulation, which came into force on 1 June 2010, contains particular competition rules applicable to motor vehicle aftermarkets i.e. purchase and sale of spare parts as well as the provision of repair and maintenance services for motor vehicles.

As stated in recital 13 of Regulation No 461/2010, effective competition in the vehicle aftermarket sector depends on the degree of competitive interaction between not only authorised repairers, but also between authorised and independent operators, including independent spare parts suppliers and repairers. The independent operators’ ability to compete will depend, among other things, on unrestricted access to essential inputs such as spare parts and technical information.

Considering these general purposes, Article 5 of Regulation 461/2010 establishes that the following restrictions will be considered as hardcore restrictions, i.e. restrictions that (i) remove the benefit of the block exemption, (ii) are presumed to infringe Article 101(1) TFEU and (iii) are unlikely to satisfy the conditions of Article 101(3) TFEU for individual exemption:

- a) the restriction of the sale of spare parts for motor vehicles by members of a selective distribution system to independent repairers which use these parts for the repair and maintenance of a motor vehicle;
- b) the restriction, agreed between a supplier of spare parts, repair tools or diagnostic or other equipment and a manufacturer of motor vehicles, of the supplier’s ability to sell those goods to authorised or independent distributors or to authorised or independent repairers or end users;
- c) the restriction, agreed between a manufacturer of motor vehicles which uses components for the initial assembly of motor vehicles and the supplier of such components, on the supplier’s ability to place its trade mark or logo effectively and in an easily visible manner on the components supplied or on spare parts.

The European Commission Notice containing the Supplementary Guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles (hereinafter referred to as “the Supplementary Guidelines”).⁹

As the name implies, the guidelines are supplementary i.e. they must be read in conjunction with the general European Commission Guidelines on Vertical Restraints. Rather than simply being a guide to Regulation No 461/2010, the Supplementary Guidelines provide additional guidance as to how the European Commission will apply Competition rules to particular types of conduct such as for example, prevention of access to technical information, which are not specifically addressed in Regulation No 461/2010.

As stated by the European Commission in the Supplementary Guidelines,

⁸ Commission Regulation (EU) No 461/2010 of 27 May 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices in the motor vehicle sector OJ L 129, 28.5.2010, p. 52–57.

⁹ Commission notice — Supplementary guidelines on vertical restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles OJ C 138, 28.5.2010, p. 16–27.

- *“(63) ... if the supplier fails to provide independent operators¹⁰ with appropriate access to its brand-specific technical repair and maintenance information, possible negative effects stemming from its agreements with authorised repairers and/or parts distributors could be strengthened, and cause the agreements to fall within Article 101(1) of the Treaty”, and moreover*
- *“(64) ... a lack of access to necessary technical information could cause the market position of independent operators to decline, leading to consumer harm, in terms of a significant reduction in choice of spare parts, higher prices for repair and maintenance services, a reduction in choice of repair outlets and potential safety problems. In those circumstances, the efficiencies that might normally be expected to result from the authorised repair and parts distribution agreements would not be such as to offset these anti-competitive effects, and the agreements in question would consequently fail to satisfy the conditions laid down in Article 101(3) of the Treaty”.*

Based on these considerations, analysis should be undertaken not only on the type of technical information that is or not being provided by suppliers to independent operators, but also on the way in which this technical information is being provided. It is the European Commission’s view that access to this information should be given upon request, without undue delay, in a usable form and for a price that does not discourage access to it. When analyzing a possible lack of access to technical information concerning passenger cars marketed before 1 September 2009 and heavy duty vehicles commercialized before 1 January 2013, the European Commission will take into account criteria laid down in access rules established by Regulation 715/2007, Regulation 692/2008 and Regulation 595/2009.

1.2.3. Remarks on the links between regulatory rules and competition law

It appears that effective access to vehicle technical information (as laid down in the Type approval Regulations) contributes to the maintenance of effective competition in the market (as provided for in Article 101 TFEU, Regulation No 461/2010 and the Supplementary Guidelines), both categories of legal instruments being interlinked. Indeed, by establishing a clear obligation on vehicle manufacturers to provide independent operators with the necessary technical information, as well as the conditions determining how the information shall be disclosed, the abovementioned Type approval Regulations constitute an instrument which supports effective competition in the market.

Moreover, some authors have recognized that the fact that obligations to provide technical information are contained in regulatory instruments and therefore, are not only dealt with by the competition rules, constitutes a clear advantage.¹¹ This is because, according to these authors, there are limits as to what can be achieved by applying Article 101 TFEU to agreements between repairers and motor vehicle manufacturers.

In particular, based on competition law rules:

¹⁰ Independent operators includes independent repairers, spare parts manufacturers and distributors, 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.

¹¹ Clark, J. and Simon, S.

Firstly, car manufacturers cannot be required to grant access to technical information that will not be used for repair and maintenance such as for example, information used to manufacture multi-brand repair tools, because this would involve either enforcement of Article 101 TFEU against the agreement between the car manufacturer and the tool-maker or the application of Article 102 TFEU (against abuse of dominant position). Either of these approaches would be complicated in practice by the fact that much of the information in question is likely to be in the hands of the tool-maker and may be subject to the latter's intellectual property rights. In addition, the application of Article 102 TFEU is not always clear, since authorities must previously provide evidence of the existence of a dominant position.

Secondly, it is not evidently clear whether it or not it is appropriate to apply Article 101 TFEU against agreements between car manufacturers and their authorised repairers when the information that car makers fail to disclose is not provided to their authorised repair networks. It could be argued that the failure to grant access to technical information to a competitor would foreclose such a competitor. However, in this scenario the harm is caused by the failure to provide the information and not the provision of information in an exclusive manner to an authorised repairer. It is therefore likely that such behaviour could only be attacked through Article 102 TFEU.

Thirdly, car manufacturers cannot be obliged to disclose information that is of a commercial nature such as repair shop management software, or information on the time that it takes an authorised repairer to carry out a given repair. The exchange of this type of data may actually have anti-competitive effects for instance by reducing diversity and aligning elements of the overall price of repair.

Finally, as the Commission has pointed out, type approval legislation lays down an independent obligation of the manufacturer to comply with his obligations with regard to granting access to repair and maintenance information, should he wish to obtain a whole vehicle approval, independently of any vertical agreements he may enter into with its authorized dealers and repairers,¹² while existing competition law rules aim to ensure that those vertical agreement do not restrain competition.

1.3. T Category

1.3.1. Type approval regulations

Unlike for M Category vehicles, no specific rules concerning RMI access are included within the Type Approval Directives for T Category vehicles. However, there is a proposal for a Regulation of the European Parliament and of the Council on the approval of agricultural or forestry vehicles, which devotes a whole chapter to the access to vehicle repair and maintenance information.

The proposed regulation significantly simplifies the type approval legislation currently in force by replacing 24 base Directives (and around 35 related amending Directives) in the field of agricultural and forestry vehicle technical requirements.¹³

¹² European Commission, note on "Provision on repair and maintenance information (RMI) in the Commission legislative proposal for the approval of agricultural or forestry vehicles (22 March 2011, ENTRD.5.2011.342446).

¹³ Council Directives 74/347/EEC, 76/432/EEC, 76/763/EEC, 77/537/EEC, 78/764/EEC, 80/720/EEC, 86/297/EEC, 86/298/EEC, 86/415/EEC, 87/402/EEC; European Parliament and Council Directives 2000/25/EC, 2003/37/EC, 2009/57/EC, 2009/58/EC, 2009/59/EC, 2009/60/EC, 2009/61/EC, 2009/63/EC, 2009/64/EC, 2009/66/EC, 2009/68/EC, 2009/75/EC, 2009/76/EC and 2009/144/EC.

1.3.2. Competition Law

Tractors and other agricultural machinery do not fall within the definition of motor vehicles as provided for in Regulation 461/2010. They are then subject to the General Block Exemption Regulations on Vertical Restraints. Consequently, agricultural and forestry suppliers have organised their distribution systems and dealer networks according to the principles laid down in such general regulations. At present, the applicable rules are contained in:

- Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (hereinafter referred to as Regulation (EU) N°330/2010).¹⁴
- The European Commission Notice containing the Guidelines on Vertical Restraints (hereinafter referred to as the Guidelines on Vertical Restraints).¹⁵

The Association CEMA (European Agricultural Machinery) stated in a Position Paper dated 1 December 2010¹⁶ that, unlike Regulation No 461/2010, Regulation (EU) N°330/2010 allows agricultural and forestry vehicle manufacturers to refuse to supply components and spare parts, as well as to provide repair and maintenance information, to non-authorised operators i.e. to independent repairers operating outside the manufacturer's distribution network. CEMA based this position on the fact that under certain circumstances, competition law, and in particular Regulation 330/2010, allows manufacturers to set up distribution and repair networks where "authorised" dealers and/or repairers shall meet certain qualitative criteria such as for example trained staff, the carriage of a full product range, the maintenance of sufficient inventories and the guarantee of high quality after sales services.

However, it should be remembered that pursuant to Article 4 e) of Regulation (EU) N°330/2010, a restriction contained in an agreement by way of which a supplier of spare parts, regardless of whether the spare parts are manufactured for a motor vehicle or not, is restricted in supplying technical information necessary for the use of spare parts by end-users, independent repairers or maintenance service providers, may amount to a hardcore restriction contrary to Article 101(1) TFEU.

Regulation (EU) N°330/2010 does not contain specific references to eventual direct obligations imposed on vehicle manufacturers to grant access to RMI. However, should T category vehicle manufacturers deny access to technical information necessary for repair and maintenance; this refusal could amount to a restriction of competition contrary to Articles 101 and 102 TFEU. This would be the case when such a refusal to grant access has foreclosure effects on the repair and maintenance market e.g. preventing certain repairers to operate. Such restrictions shall be appraised eventually by following the criteria laid down by Regulation (EU) N°330/2010 and the Guidelines on Vertical Restraints.

¹⁴ Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices OJ L 102, 23.4.2010, p. 1–7.

¹⁵ Commission notice - Guidelines on Vertical Restraints. Official Journal C 130, 19.05.2010, p. 1.

¹⁶ CEMA Position Paper. Regarding the legal aspects of the proposed regulation on the type approval of agricultural vehicles. 1 December 2010.

1.4. PTW/ L Category

1.4.1. Type approval regulations

Unlike for M Category vehicles, no specific rules concerning RMI access are included within the Type Approval Directives for PTW/L Category vehicles. However, there is a proposal for a Regulation of the European Parliament and of the Council on the approval and market surveillance of two or three-wheel vehicles and quadricycles, which devotes a whole chapter to the access to vehicle repair and maintenance information.

Type-approval requirements for new vehicles of the L category are currently set out in Directive 2002/24/EC of the European Parliament and of the Council (the 'Framework Directive').¹⁷ In addition, a series of Directives referred to in the Framework Directive contain detailed technical requirements relating to L-category vehicles.

1.4.2. Competition law

What is said in section 1.3.2 herein applies also, *mutatis mutandis*, to PTW/L Category vehicles.

1.5. Legal Basis

The Proposals for Type Approval Regulations for PTW/L Category and T Category vehicles under scrutiny in this briefing paper have as their legal base, Article 114 TFEU.

CEMA indicated in its aforementioned Position Paper that *"it is highly doubtful whether the Proposal [for Type Approval Regulation of Agricultural vehicles] can be imposed through legislation based on Article 114 TFEU. Legislation impacting the application of the legal competition framework of Article 101 and 102 TFEU must be based on Article 103 TFEU. The European Court of Justice has considered a legislative act based on a false legal basis as void¹⁸".*

Admittedly, access to technical information on vehicles by independent operators also appears to be a necessary tool aimed specifically at maintaining competition in the market. Based on this, it might be considered that specific rules contained in Type Approval Regulations that provide an obligation to grant access to vehicle technical information have one single objective i.e. the maintenance of effective competition. However, in the present instance, provisions on due access to technical information need to be contained in a regulation that is not limited to the regulation of matters of access (and the competition concerns arising there from) but also a larger number of issues related to the technical approval of vehicles (and not being directly related to effective competition in the market).

It should also be taken into account that the European Court of Justice has recognized that Article 114 TFEU may be used as legal base for the adoption of EU measures aimed not only at eliminating obstacles to the internal market, but also at removing appreciable distortions of competition.¹⁹

¹⁷ Directive 2002/24/EC of the European Parliament and of the Council of 18 March 2002 relating to the type-approval of two or three-wheel motor vehicles and repealing Council Directive 92/61/EEC OJ L 124 de 9.5.2002, p. 1.

¹⁸ Judgment of the Court of 5 October 2000, Case C-376/98, Germany v Parliament / Council.

¹⁹ ECJ, *ibidem*, Barnard, C. "The Substantive Law of the EU. The four freedoms". Oxford, 3rd edition, 2010.

On this particular issue, the Commission recalls that the same legal basis (article 114 TFEU) has already been used for Regulations (EC) No 715/2007, applicable to light passenger and commercial vehicles (Euro 5 and Euro 6) and (EC) No 595/2009 applicable to heavy duty vehicles (Euro VI), without the legal base having been questioned. The obligations to grant access to RMI are integrated obligations of the manufacturer in the type-approval process which is the subject of the legal measure.²⁰ Therefore, even if competition law exempts certain agreements containing restrictions of access to RMI (which, in any event, is not the case for PTW/L Category and T Category), this would not prevent the legislator from adopting type-approval legislation with requirements to grant access to repair and maintenance information.

²⁰ European Commission, note on "Provision on repair and maintenance information (RMI) in the Commission legislative proposal for the approval of agricultural or forestry vehicles (22 March 2011, ENTR.D.5[2011]342446).

2. MARKET CONDITIONS

2.1. M Category

KEY FINDINGS

- Independent repairers constitute the major competitive force in the markets for repair and maintenance.
- In order to truly achieve effective competition in the motor vehicle aftermarkets, it is essential that all operators are able to obtain the necessary technical information.

2.1.1. Market conditions of the motor vehicle aftermarket

According to the European Commission, car repair is important to consumers, obviously for road/vehicle safety reasons, but also because repair services accounted at that moment for around 40% of the lifetime cost of owning and running a car. Repair prices have risen rather than fallen and prices are very high for certain types of spare parts.²¹

As recognised by the Commission in 2009, competition in the repair markets is by nature limited because there is a specific market for each brand of vehicle, meaning that manufacturers' authorised networks are generally considered to enjoy high market shares. As such, more safeguards were required.²²

There are essentially four different players active in the markets for motor vehicle repair and maintenance:

- Motor vehicle manufacturers: they provide their authorised dealers and repairers with the full scope of technical information needed to perform repair and maintenance work on motor vehicles of their brands. Manufacturers are often the only companies able to provide repairers with all the necessary technical information for the repair and maintenance of motor vehicles of the brands in question.
- Authorised spare parts distributors: they operate within the distribution system set up by motor vehicle manufacturers. Authorised distributors may be mono-brand or multi-brand operators i.e. they may resell spare parts from one single manufacturer or from several manufacturers.
- Authorised repairers: they provide repair and maintenance services for motor vehicles within a distribution system set up by a motor vehicles manufacturer. Authorised repairers may operate mono-brand or multi-brand business i.e. they may carry out repair and maintenance for vehicles from one single manufacturer or from several manufacturers.

²¹ See MEMO/09/348 and IP/09/1168 of 22 July 2009. These releases were published by the European Commission in order to announce its policy orientations for the future legal framework for motor vehicle distribution and after sale services agreements after the expiry of Regulation 1400/2002 in May 2010.

²² "Although Article 4(2) of the BER, which provides for full and nondiscriminatory access by independent after-market operators to vehicle manufacturers' brand specific technical repair information, may have had some use in signaling the Commission's concerns, enforcement action in response to persistent problems in this area has involved the application of Article 81, and such action will remain possible even in the absence of the current rules in the BER" Commission Evaluation Report on the "Operation of Regulation (EC) N° 1400/2002 concerning motor vehicle distribution and servicing".

- Independent operators: this category includes independent repairers, spare parts manufacturers and distributors, 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.²³

More precisely, an independent repairer is to be understood as:

- a) EITHER a provider of repair and maintenance services for motor vehicles that operate outside the distribution system set up by motor vehicle manufacturers; OR
- b) an authorised repairer within a distribution network of a given manufacturer that provides repair and/or maintenance services for motor vehicles in respect of which it is not a member of the respective supplier's distribution system.

Some authors have indicated that independent repairers constitute the major competitive force in the market for repair and maintenance due to their different business mode, which generally results in lower costs.²⁴ According to market sources quoted by the aforementioned authors, prices charged are on average 15-20 per cent lower than those of the authorised repair networks.²⁵

According to ACEA (European Automobile Manufacturers Association), the market for motor vehicle repair is serviced in equal proportion by independent repairers and authorised repairers. The average 50-50 percentage may vary slightly in some countries, in which it is possible to find more independent repairers (i.e. Italy) or, on the contrary, more authorised repairers (i.e. Germany).

According to CLEPA's figures (European Association of Automotive Suppliers) the European car market currently represents 265 million vehicles with an average lifespan of 8.2 years. This motor vehicle market can be divided by vehicle age in Segment I (0-4 years), Segment II (4-8 years) and Segment III (> 8 years). Segment I covers all repairs covered by guarantee. Therefore, taking into account that a vehicle's average lifespan is 8.2 years; significant repairs would be carried out to Segment II vehicles. The result is that vehicles within Segment I are mainly repaired by authorised repairers, while those in Segments II and III are repaired mainly by independent repairers.

2.1.2. Impact of RMI requirements in the aftermarket conditions

In order to truly achieve effective competition in the after sales services markets, it is essential that all operators have access to the technical information necessary to carry out repairs and maintenance on increasingly sophisticated vehicles. According to Regulation 715/2007, the concept of Repair and Maintenance information ("RMI") refers to all information required for the diagnosis, servicing, inspection, periodic monitoring, repair, re-programming or re-initialising of vehicles which the manufacturers provide for their authorised dealers and repairers, including all subsequent amendments and supplements to such information. This information also includes all information required for fitting parts or equipment on vehicles.

²³ According to the paragraph 62 of the Supplementary Guidelines on Vertical Restraints in agreements for the sale and repair of motor vehicles and for the distribution of spare parts for motor vehicles (OJ C138 of 28.05.2010, p. 16 et seq.), independent repairers are included in the category of independent operators, which also includes, spare parts manufacturers and distributors, 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.

²⁴ Clark, J and Simon, S.

²⁵ Clark, J. and Simon, S, Footnote 46.

A lack of access to necessary RMI might negatively affect the market position of independent operators, leading to consumer harm in terms of a significant reduction in choice of spare parts, higher prices for repair and maintenance services, a reduction in choice of repair outlets and potential safety and environmental problems.

Rules currently in place (type approval, on one hand, and competition rules, on the other) are both intended to make sure that independent repairers operate on a level playing field with authorised networks and in particular, that they have access to the technical information they need to repair vehicles. As already indicated, according to these two sets of rules, technical information should be made available in a way that is proportionate to independent repairers' needs. Pursuant to Article 4.2 of Regulation 1400/2002, this implies both the unbundling of information and pricing that takes into account the extent to which independent repairers use the information.

Concerning the application of competition rules to the abovementioned obligation, in 2007, the European Commission adopted four legally binding Decisions namely, Daimler Chrysler, Toyota, General Motors and Fiat with respect to the commitment to provide complete motor vehicle technical information to independent repairers in the European Union.²⁶ In the Commission's view, although the aforementioned companies had improved the accessibility to their car technical information following the entry into force of Regulation 1400/2002, the information that had been made available to independent repairers was still incomplete. In order to solve this problem, the companies offered commitments by way of which the same technical information be made available in a non-discriminatory manner to authorised and independent repairers. The Commission declared that this commitment bound the companies until 31 May 2010.

It should be noted that in these Decisions, "technical information" comprised, as established in Article 4.2 of Regulation 1400/2002, any technical information, diagnostic and other equipment, tools, including any relevant software, or training required for the repair and maintenance of these motor vehicles or for the implementation of environmental protection measures, including in particular the unrestricted use of the electronic control and diagnostic systems of a motor vehicle, the programming of these systems in accordance with the supplier's standard procedures, the repair and training instructions and the information required for the use of diagnostic and servicing tools and equipment.

Daimler Chrysler, Toyota, General Motors and Fiat invoked the applicability to their cases of Recital 26 of Regulation 1400/2002. According to this recital, it is legitimate and proper for car manufacturers to withhold access to technical information which might allow a third party to bypass or disarm on-board anti-theft devices, to recalibrate electronic devices or to tamper with devices which for instance limit the speed of a motor vehicle, unless protection against theft, re-calibration or tampering can be attained by other less restrictive means. The Commission withheld this argument in favor of car manufacturers. It stated however, that this limitation is to be interpreted narrowly and that therefore, the lack of technical information in question shall not prevent independent repairers from operating in the market.

²⁶ Decisions of the European Commission of 13 September 2007 relating to proceedings pursuant to Article 81 of the EC Treaty in cases COMP/E-2/39140 – Daimler Chrysler; COMP/E-2/39142 – Toyota; COMP/E-2/39143 – Opel and COMP/E-2/39141 Fiat.

More recently, BOVAG (the Dutch association of independent motor vehicle dealers and repairers) commissioned an investigation on technical information available in practice on the websites of Euro 5 vehicle manufacturers. The findings of the investigation are contained in a report dated March 2011. In particular, the investigation aimed at analyzing (i) to what extent car manufacturers' websites provide independent repairers with technical information and (ii) whether independent repairers succeed in downloading software updates from the manufacturers' websites. The investigation focused on the technical information of twenty nine car manufacturers contained on seventeen websites (it should be taken into account that in some cases one single parent company controls more than one car manufacturer).²⁷

In summary, the main findings of this investigation were:

- Considering various types of technical information (repair information, electrical diagrams, TSB, recall information, service/maintenance intervals and maintenance work), only five of the seventeen websites examined provided information about each of these items.²⁸
- Only on seven out of the seventeen websites finding/downloading/activating communication programs for installing software updates was possible.²⁹ As for the remaining websites, it proved impossible for researchers to obtain the communication program (either because it was only available on CD format, due to error messages or because the information could only be downloaded using manufacturer-specific equipment, etc).

Furthermore, the investigation phase carried out for drafting this paper showed that in order to enable independent repairers to compete with the manufacturers' networks of authorised repairers, independent repairers should also have access to spare parts in the same conditions as the authorised repairers. CLEPA (European Association of Automotive Suppliers) has emphasized that its members should be free to sell their products to authorised repairers but also to independent aftermarket operators. Spare parts manufactured on the same production line as the original component of the vehicle (OES parts - original equipment supplied), as well as spare parts produced by "matching quality" spare parts manufacturers, are often cheaper than identical parts bearing the brand of the vehicle manufacturer (OEM parts - original equipment manufactured). Alternative supply channels for the distribution of spare parts to both independent and authorised repairers must remain open.

Finally, following ACEA's opinion, repair processes are more complicated and access to information is therefore more of a key issue in the motor vehicles market than in the powered two-wheelers and tractor sectors. This view is based on the greater technicality of cars which are more complex in terms of electronic/computerized systems. Furthermore, M category vehicles have many safety systems that increase the need for information. This view is not however, shared by actors of the other industries at stake. In this sense, the agricultural machinery manufacturers consider that the repair process in this sector is at least as complicated, if not more complicated, as that in the M category sector (cf. section 2.2. hereafter).

²⁷ (i) Audi, Seat, Skoda, Volkswagen; (ii) BMW, Mini; (iii) Citroën, (iv) Alfa Romeo, Fiat, Lancia; (v) Ford; (vi) Hyundai, Kia, (vii) Jaguar; (viii) Land Rover, (ix) Mazda; (x) Mercedes Benz, Smart, (xi) Nissan; (xii) Opel, Chevrolet; (xiii) Peugeot; (xiv) Renault, Dacia; (xv) Suzuki; (xvi) Toyota, Lexus; (xvii) Volvo.

²⁸ (i) Alfa Romeo, Fiat, Lancia; (ii) Ford; (iii) Mazda; (iv) Opel, Chevrolet, and (v) Toyota, Lexus.

²⁹ (i) BMW, Mini; (ii) Citroën / Peugeot; (iii) Ford; (iv) Hyundai, Kia; (v) Mazda; (vi) Opel/Chevrolet; and (vii) Renault, Dacia.

2.2. T Category

KEY FINDINGS

- Agricultural vehicles are not considered consumer goods and, therefore, market conditions differ from those described for M and PTW/L Categories.
- According to the industry, repair and maintenance of agricultural and forestry vehicles is considerably more complicated than repair and maintenance for motor vehicles and is subject to specific constraints (taking into account the investment and not consumer-character of the concerned products).
- The effect of such specific constraints would be that there are practically no independent operators active in the repair and maintenance market for T Category vehicles.
- Hence, according to the industry, Chapter XVI of the Draft Regulation is to be applied to a category of professionals that “do not and will not exist” in the market.
- This should not prevent European Institutions from adopting an RMI regime, but such regime should be adapted to the special features of the T Category Vehicles aftermarket.

2.2.1. General overview

In order to appraise whether the market for repair and maintenance of T Category Vehicles is comparable to the market for repair and maintenance of M Category Vehicles (for which Type Approval Regulations already exist), this study is focused on:

- the existing case law and literature; and
- direct input of the industry obtained during the consultation period.

Elements obtained from both sources, compared to the main features of the M Category aftermarket as described in Chapter 2.1 above, will allow us to assess (i) the differences and similarities between the two markets and (ii) the appropriateness of the proposal made by the European Commission considering the particularities of the market for repair and maintenance of T Category Vehicles.

2.2.2. Main features of the market for T Category Vehicles

According to CEMA (European Agricultural Machinery), agricultural and forestry vehicles are highly specialised vehicles with a significant amount of specific interchangeable equipment or mobile machinery. This category of vehicles comprises different vehicles with a vast number of different uses including, for example balers, self propelled forage harvesters, trailers, towed equipment, harvesters as well as different types of tractors.

Agricultural and forestry vehicles are mainly used locally on farms and arable land. These vehicles take part in normal road traffic but only marginally. They are the basic piece of equipment for the mechanization of the farm unit and can not be considered as consumer goods. Rather, these vehicles are used by agricultural and forestry companies whereas motor vehicles are primarily intended as a means of transportation for consumers. The size of this market in terms of units sold represents less than 1.5% when compared to motor vehicles.

According to the European Commission, the existence of an effective distribution network appears to play a key role in the sale of agricultural vehicles because customers cannot afford to wait in the event of breakdown and therefore need a local dealer and after-sale servicing provider. Furthermore, customers who change products frequently, usually require the seller to trade in their used equipment and therefore generally only approach distributors.³⁰

Distribution is mainly organised on a national basis through networks of exclusive distributors (either independent third parties or affiliates) and exclusive local dealers. The establishment of an effective distribution network requires heavy and time consuming investments. There are also national preferences for certain brands and considerable market share variations from country to country.

The industry confirms that large manufacturers in Europe sell their agricultural machinery via exclusive, single-brand dealers. These "authorised dealers" are in general selected on the basis of qualitative criteria such as trained sales staff, the carrying of a full product range, maintenance of sufficient inventories and the guarantee of high quality after-sales service such as repair and maintenance. These distribution networks should be in compliance with the Block Exemption Regulation (EU) N°330/2010 on Vertical Restraints.

CEMA (European Agricultural Machinery) claims that the tractor and car sectors are totally different businesses that have always been dissociated. Thus, CEMA does not understand the reason why the European legislator is willing to treat these two industries in the same way as they have always been regulated separately and differently.

However, FIGIEFA (Automotive aftermarket distributors) has emphasized that there may be important similarities between heavy vehicles or trucks and tractors. It should be noted that trucks are submitted to the same regulatory and competition law rules as cars. Similarities between trucks and tractors listed by FIGIEFA are:

As both types of machines are investment tools related to an economic activity, in both cases the machine must be repaired quickly as the owner loses money while the vehicle is not working.

The number of repairers in both markets is limited.

Both kinds of machines are complex and require significant amounts of specific interchangeable equipment or mobile machinery (such as threshers for tractors or tanks for trucks) which quite often are not all made by vehicle manufacturers.

In FIGIEFA's opinion, these similarities between both markets may justify the adoption of the planned draft Regulation for the tractor sector.

³⁰ Case N° COMP/M.1571, NEW HOLLAND / CASE: Commission decision of 28/10/1999 relating to a merger in the agricultural machinery sector.

2.2.3. Aftermarket conditions

Repair and maintenance is in general mainly carried out by authorised dealers, which are trained on a continual and ongoing basis. This training is one of the obligations usually contained in the selective distribution agreements. Authorised dealers for agricultural machinery, which consist of mainly small and medium sized companies, invest significantly in repair shops, service centers, inventory, building and training repair staff in order to adhere to the manufacturers' selective requirements. These repairers always use the latest standard of spare parts during a repair, guaranteeing therefore a high standard of quality and safety.

As stated by CEMA (European Agricultural Machinery), tractor operators need the repair to be done "on the spot" and within a very short time frame, especially in the instance where they are carrying out a concrete task. As a consequence, the location of the repairer becomes an essential consideration. Moreover, CEMA distinguished between two types of customers: (i) isolated farmers or small and medium enterprises owning or operating small fields and (ii) big farmers (mainly located in East Europe and USA). The big farmers usually repair their machines themselves and therefore, enter into special agreements with tractor manufacturers and are trained by them. The big farmers represent only 5% of the European market. According to CEMA, small farmers need strong relationships with dealers and repairers and look for extreme reliability on the part of the repairer. Accordingly, they may be reluctant to choose an independent repairer.

Also according to CEMA, the repair and maintenance of agricultural and forestry vehicles is considerably more complicated than the repair and maintenance of motor vehicles and is subject to quite specific constraints, in particular that agricultural and forestry vehicles have a lot of connections with tools and systems (hydraulics, transmissions systems). These specificities have an impact on the competitive conditions of the repair market in which, unlike in the motor vehicles repair market, practically no independent operators exist.

CEMA considers that Chapter XVI of the draft regulation is devoted to a category of professionals that "*do not and will not exist*". The Chapter would be, therefore, useless. In their view, the problem is that fulfilling the requirements established in Chapter XVI of the draft regulation would be very expensive for manufacturers and would have, at the end, a negative impact on clients (to whom the cost arising there from would be passed on).

In addition, despite the fact that the European legislator has for a long time detected significant competition shortcomings in the aftermarket for motor vehicles and has required free access to repair information for independent repairers to foster competition in the motor vehicle aftermarket, according to CEMA no similar competition shortcomings have been detected in the aftermarket of agricultural and forestry vehicles. CEMA claims that there is no market for independent repairers and that there would be no demand on the market for such category of repairers.

By contrast, the European Commission points out that it cannot be excluded that notwithstanding the exclusivity agreements, independent repairers in the sometimes remote agricultural regions of the EU have to repair tractors in case of urgency or of minor problems.³¹

³¹ European Commission, note on "Provision on repair and maintenance information (RMI) in the Commission legislative proposal for the approval of agricultural or forestry vehicles (22 March 2011, ENTR.D.5[2011]342446).

Moreover, it is necessary to mention that according to CLEPA (European Association of Automotive Suppliers), in the tractors aftermarket, authorised repairers also act as independent repairers in relation with brands of manufacturers to whom they are not linked by a distribution agreement. This association maintains that those “independent repairers” seem to not have full access to spare parts.

FIGIEFA (Automotive Aftermarket Distributors) and EGEA (European Garage Equipment Association) consider that the lack of legal provisions makes the access to RMI very burdensome for independent operators; hence the development of independent service providers has been very difficult in the past. Therefore, most repairers choose to join the authorised networks to be able to get any form of technical information. FIGIEFA and EGEA note to this extent, that an increasing number of vehicles are equipped with OBD system, which means complex repair and maintenance. Legal provisions on access to RMI for T Vehicles would then be crucial, FIGIEFA pleading even for establishing, on a long term basis, standardized processes and diagnostic information tools similar to those existing for light passenger and commercial M Category Vehicles (Euro 5 and Euro 6).

In contrast with CLEPA's and FIGIEFA's position, and taking into account that in some isolated cases independent repairers may appear once the draft regulation is in force, CEMA considers that these independent repairers could try to tamper tractors to avoid enforcing legal requirements in terms of safety or emissions.

Therefore, in case manufacturers give these operators all of the information required by the draft Regulation, the industry will be obliged to ask for measures obliging every independent repairer to respect protocols or selective procedures. According to CEMA's view, it is necessary that proper training and qualification be provided by the manufacturer and that this should be a precondition to the provision of any information.

As the European Commission notes, ensuring the proper qualification of professions which can, if carried out by unqualified personnel, present a risk to the public health or safety, is a very important concern, but this concern should certainly not be addressed in the type approval legislation, but in the relevant legislation concerning professional qualifications.³²

Finally, from a legal point of view, CEMA considers that the European Commission is not entitled to base the draft Regulation on Article 114 TFEU. According to CEMA, any legislation impacting the application of Competition Law rules established by Articles 101 and 102 TFEU must be based on Article 103 TFEU. Consequently, under CEMA point of view, the Draft Legislative Act would be void.

2.2.4. Do the proposed requirements for access to RMI need reconsideration in relation to their policy objective?

With respect to possible errors concerning the selection of a legal basis for the adoption of a new Type Approval regime including RMI obligations (cf. last paragraph of section 2.2.3 above), please see Chapter 1 herein (legal framework). On the one hand, the European Court of Justice has recognized that Article 114 TFEU may be used as legal base for the adoption of EU measures aimed not only at eliminating obstacles to the internal market, but also at removing appreciable distortions of competition.³³ On the other, and as the Commission recalls, the same legal basis (article 114 TFEU) has already been used for Regulations (EC) No 715/2007 and (EC) No 595/2009, without the legal base having been questioned.

³² European Commission, *ibidem*.

³³ ECJ, *ibidem*, Barnard, C. “The Substantive Law of the EU. The four freedoms”. Oxford, 3rd edition, 2010.

Type approval legislation lays down an obligation of manufacturers to comply with their obligations with regards to granting access to RMI, should they wish to obtain a whole vehicle approval, irrespective of the distribution network (and the possible restriction of competitions arising therefrom) used by the manufacturers.

As indicated above, some of the tractor industry associations consider that given the specific constraints of the sector stemming from the very nature of the product itself (complex vehicles used almost exclusively for working land and submitted to significant investment costs not only for the purchase of the product but also for its repair) means that there would be no room for independent operators and therefore, no competition concerns would arise.

However, it also appears to be clear that the adoption of a unique, simplified and coherent Type Approval Regulation for T Category vehicles (including access to information requirements) may have the effect of completing the EU single market in the sense that this new regime could facilitate the entrance of new actors in the market. The fact that for the time being repair and maintenance of T Vehicles is exclusively ensured by authorised dealers, should not automatically mean that there is no room in the market for other types of actors (such as independent repairers of large customers directly ensuring the repair and maintenance of their own vehicles).

On this particular issue, it could be argued that, as a general rule, where the technical information is freely available, there is no reason for a repairer to try to belong in any authorised network. This having been said, the question is whether the proposed regulations, combined with the existing competition rules (namely Regulation 330/2010), are efficient enough to prevent manufacturers, authorised repairers and clients from the negative effects of free riding. Likewise, it should be assessed whether, for some concrete elements of the information to be provided by manufacturers (such as wiring diagrams) the proposal for Regulation with regard to access to technical information leads practically to impose a compulsory licence into intellectual property rights.³⁴

Moreover, the adoption of a regime including RMI obligations (adapted to the special needs of the tractor industry) could also have the indirect effect of opening to independent repairers, the market for spare parts. To this extent, an assessment of whether the price of parts sold to independent resellers (provided that such operators do exist, as CLEPA and FIGIEFA sustain) is higher than that of manufacturers and authorised resellers/repairers, as well as whether the adoption of such a regime could overcome these differences in pricing would be welcome, taking into account that to a large extent, manufacturers of different types of vehicles choose amongst the same supply sources.³⁵ The existence of such differences on price if any could be due to various reasons including: lower volume per customers than for authorised resellers/repairers; requirements for rapid delivery which necessitates the holding of stock; marketing support; packaging etc. Meanwhile, the proposed assessment seems advisable, as it should be recalled that pricing activity is competition 'in one of its essential forms'.³⁶

³⁴ Should this be the case in some concrete and exceptional scenarios, it should be here recalled that, according to the CJEU case law, even if the owner of a technology (which is protected by intellectual property rights or constitutes a secret know how) has a dominant position in the relevant market, it can legitimately deny access to their technology, since its obligation to provide access would demolish the very existence and the economic value of its right. Only under very exceptional circumstances could this denial constitute an examinable, in competition law terms, abuse. ECJ, RTE and ITP v Commission [1995], ECR I-743, paragraph 53.

³⁵ Cf. *Mutatis mutandis*, Case IV/M.1491, Robert Bosch / Magneti Marelli, para. 11.

³⁶ A. *Ahlström Osakeyhtiö and Others v. Commission* ('Wood Pulp'), [1993] ECR I-1307.

Finally, it is noteworthy to mention the comparison made by FIGIEFA between T Category vehicles and heavy duty vehicles (Cf. Section 2.2.2. above, *in fine*). Future legal provisions on access to RMI for T Category vehicles could be similar to those concerning heavy duty vehicles, while taking into account the specificities of the T Category Vehicles and of the aftermarket conditions, if needed.

2.3. PTW/L Category

KEY FINDINGS

- The motorcycle aftermarket is very competitive and quite fragmented. It is mainly comprised by independent multi-brand repairers.
- Manufacturers emphasize that the number of requests for access to RMI is extremely low and that the current approach of the European Commission on RMI does not respond to the reality of the market.
- On the contrary, repairers consider that quite often, and due to the lack of legal provisions on this field, vehicle manufacturers do not provide independent operators with access to their web-based technical repair and maintenance information databases.
- As with T Category Vehicles, the adoption of RMI obligations seems advisable, but this should be made by taking into account the special features of the PTW/L Category Vehicles aftermarket.

2.3.1. General overview

As in relation with T Category Vehicles, in order to appraise whether the market for repair and maintenance of PTW/L Category Vehicles is comparable to the market for repair and maintenance of M Category Vehicles, this study is focused on:

- the existing case law and literature; and
- direct input of the industry obtained during the consultation period.

Elements obtained from both sources compared to the M Category aftermarket main features as described in Chapter 2.1 above, will allow us to assess (i) the differences and similarities between the two markets and (ii) the appropriateness of the proposal made by the European Commission considering the particularities of the market for repair and maintenance of PTW/L Category Vehicles.

2.3.2. Main features of the market for PTW/L Category Vehicles

Proposal for Regulation on motorcycles 2010/0271 (CDO) (COM(2010)542) provides a list/description of the vehicles to be included in PTW/L Category:

Vehicle Category Name	Category
Powered cycle	L1Ae
Two-wheel moped	L1Be
Three-wheel moped	L2e
Two-wheel motorcycle	L3e
Two-wheel motorcycle with side-car	L4e
Tricycle	L5Ae
Commercial Tricycle	L5Be
Light quad	L6Ae
Light mini car	L6Be
On-road quad	L7Ae
Heavy mini-car	L7Be

According to industry data, in the EU27, more than 38,000 companies operate in the PTW-L sector. More than 800 are dedicated to different forms of production of PTWs, from artisanal manufacture of unique personalized models up to industrial series production. Around 80% of these companies are located in 6 Member States: Austria, France, Germany, Italy, Spain and the United Kingdom. The powered two-wheeler sector employs 150.000 people in the European Union.

Usually, the manufacturers of PTW/L's have only one or two production plants in the European Union from which they distribute their products at a European level or, even at world wide level.

After sale guarantees offered by manufacturers have in general, an EU wide scope. There is transparency of selling prices. This may amount to a homogenization of the EU market or even a homogenization of the market within the European Economic Area.³⁷ Notwithstanding, there are still differences with regard to prices, taxes, distribution schemes and commercial exchange rates in the European Union Member States.

The distribution, maintenance and repair of motorcycles, which differs from that applied in the car industry, is operated through 37,000 points of sale and services spread over the territory of the European Union. The presence of small and medium enterprises represent a fundamental characteristic of the sector as a whole, accounting for almost 98% of the total number of businesses and 3/4 of the PTW manufacturers.

³⁷ Informe del Servicio de Defensa de la Competencia, N-03055 IMMSI/PIAGGIO, Madrid.

2.3.3. Aftermarket conditions

According to ACEM (Motorcycle Industry in Europe) the motorcycle aftermarket is very competitive and quite fragmented. The motorcycle aftermarket is composed on the one hand by independent multi-brand repairers and, on the other hand, by small repairers which are more similar to bicycle repairers. Multi-brand dealers/repairers represent 80% of the PTW/L distribution. Precedents analyzed by the Commission seem to confirm this analysis.³⁸

Unlike the car industry, the European motorcycle industry is not demanding a specific tool for competition concerns in vertical relationships and seems to be satisfied with the general regime (namely Regulation (EU) N°330/2010). Likewise, according to AECM, the competition law framework provided by the Vertical Agreements Block Exemption Regulation has served its purpose, offering manufacturers, dealers and consumers a balanced and mutually beneficial business environment.

Following ACEM's data, the large number of SMEs active in the motorcycle sector will make the setting up of an RMI system and its maintenance particularly challenging in terms of logistics and costs. That is why the implementation of all the measures mentioned in the proposals for Regulation on motorcycles with regard to access to technical information, such as the setup of a web page with all the information relating to manufacturers' products, or the development of a database on their web page, setting up a web interface or maintaining the website or standardization' implementation, will become an important burden for operators. With regard in particular to multi-brand dealers/repairers, the implementation of these measures will become a significant burden as they will have to provide all of this information for every single model produced, the ratio of brand/models in the motorcycle industry being considerably higher than that in the motor vehicles sector.

CECRA (European Council for Motor Trades and Repairs) emphasizes that the different terminology used by manufacturers in data bases makes it difficult to deal with such variety. As such, it would be necessary to standardize the terms used in these data bases.

2.3.4. Do the proposed requirements for access to RMI need reconsideration in relation to their policy objective?

According to ACEM, the draft regulation concerning access to RMI requires a careful evaluation of its implications and a suitable adaptation to the motorcycle sector, both from an economic and technical point of view, to ensure the viability of the system for all players involved and to support the wider goals of the regulation (legislative simplification, environmental and safety improvements).

ACEM urges the legislator to take into account the following circumstances:

- The smaller dimension of motorcycle manufacturers compared to M category vehicles manufacturers and the higher number of dealers/repairers of motorcycles.
- The repair process in L/PTW category is less complex than in M category. (However, in this respect CECRA has indicated that all categories of vehicles require modern and complex repair and maintenance processes, as the multiplication and increasing complexity of technology make access to RMI crucial).
- The number of requests for access to RMI is extremely low and the current approach of the European Commission to RMI does not respond to the market reality. There would be no claims from independent repairers regarding access to technical

³⁸ Case COMP/M.3570 – Piaggio / Aprilia.

information. Moreover, according to ACEM, independent repairers, already have, in practice, direct access to the technical information needed.

- ACEM regrets the lack of complete prior impact assessment when considering the implementation of RMI provisions.

According to ACEM: *"ACEM is not aware of the current level of access to RMI having generated any problem or complaint, by non authorised repairers or consumers. As mentioned, repairing in the sector is equally ensured by independent repairers and authorised repairers. Most repairers are multi-brand, and it is common knowledge that official dealers for one brand also act as independent repairers for various other brands."*

However, CECRA has pointed out that *"At present vehicle manufacturers do not provide access to their web-based technical repair & maintenance information databases for independent operators. This situation is mainly due to the fact that there are no existing legal provisions on the access to RMI for independent aftermarket operators in the L-category vehicles sector; without such provisions, the access to RMI is practically impossible for independents"*. Concretely, CECRA considers that the following information is especially difficult to find: work units, inspection data, spare part identification, wiring diagrams, error codes and software updates for multibrand diagnostic tools.

ACEM considers that information on anti-theft devices for all L Category vehicles and information on anti-tampering devices for L1, L2 and L3A1 should be EXCLUDED from the Article of the Draft Regulation containing a non exhaustive list of the minimum information that manufacturers have to provide to both authorised repairers and independent repairers. ACEM believes that this information cannot always be provided in an easy way, or in other words, that manufacturers should monitor the way in which this information is provided, as otherwise, anyone may have access to this information and therefore in some instances, for unlawful reasons. ACEM raises possible legal issues with regard to manufacturers' liability in case they provide, in the way the proposal foresees, the information mentioned above without checking who will use it and for what purpose. ACEM considers that special means to protect access to this particular information should be found.

On the other hand, according to CECRA the following information should be, according to their view, included in the list:

- o *"Unequivocal vehicle identification by VIN and product features*
- o *Service bulletins*
- o *Diagnostics information*
- o *Spare parts*
- o *Spare parts identification data*
- o *Service schedules*
- o *Recall information"*

As the industry points out, Regulation (EU) N°330/2010 and the Guidelines on Vertical Restraints seem to be an adequate tool to guarantee effective competition in the sale of the spare parts and indirectly, in the repair market. According to article 4(e) of Regulation (EU) N°330/2010, the supplier of the components may not be prevented by the buyer from supplying the components as spare parts to end-users of the buyer's product or to independent repairers which repair the buyer's product. Taking as an example an agreement for the supply of motorcycle components to a motorcycle

manufacturer (but this would also be applicable to other industries, such as the T Category Vehicles), the component supplier must be allowed to sell the components as spare parts to owners of motorcycles manufactured with those components and to independent motorcycle repairers who are not authorised by the motorcycle manufacturer to repair motorcycles incorporating those components. By facilitating the availability of spare parts outside of the authorised network of the manufacturer, this provision is intended to promote competition in the repair market.

This having been said, the question remains as to whether the RMI provisions contained in the Commission's proposal will enhance such promotion of competition, as well as to whether the Commission's proposal is adapted to the PTW/L aftermarket landscape. To this extent, it appears clear from the consultation process that the approach followed by the Commission in its proposal does not sufficiently take into account the particularities of the market for the repair and maintenance of PTW/L Category Vehicles and that even though theoretically the introduction of RMI requirements could be useful, a tailor-made approach, rather than a "copy-paste" of the existing regulation for M Category Vehicles would be advisable.

Such an approach should take into account, amongst other elements, (i) the possible impact of RMI obligations on pricing of motorcycles, (ii) the ensuring of the necessarily high safety and liability standards regarding repair and maintenance and, inevitably, (iii) the restriction of negative consequences of free riding.

The impact of RMI obligations as provided for in the Commission's proposal over the pricing of motorcycles seems to be a critical issue, as the cost for implementing such requirements for each and every motorcycle model could be too high, this having a direct impact on its consumer price. In other words, what are the costs of RMI obligations and how should they be financed? Is there a real risk for RMI obligations to destabilize price competition? These are issues that should be considered when imposing RMI obligations.

In the same sense, new regulations containing RMI obligations should eventually foresee a transitional period allowing the industry to adapt its tools and policies to the new regulatory environment.

In any case, the European Institutions when adopting a new regime and the industry when reacting to the proposals that could be made, need to consider a means of improving the information flow to consumers therefore creating an environment of greater consumer confidence and awareness, the ultimate goal of EU Competition and Internal Market Law being that the enforcement of competition law can prevent (final) consumer harm and make (final) consumers better off.

CONCLUSIONS

1. Relevant differences have been identified across the three categories of vehicles analyzed as regards, among others, the type of distribution network, weight of independent repairers, destination of vehicles concerned (consumer or professional products) and the requirements arising therefrom. These differences justify a tailor-made legislation for access to RMI applicable to T and PTW/L Categories.

2. Concerning the questions raised over the possible erroneous legal basis for the adoption of new Type Approval Regulations including access to RMI obligations:

The European Court of Justice has recognized that Article 114 TFEU may be used as legal base for the adoption of EU measures aimed not only at eliminating obstacles to the internal market, but also at removing appreciable distortions of competition.

Moreover, Article 114 TFEU has been used as legal basis for Regulations (EC) No 715/2007 and (EC) No 595/2009, without the legal base having been questioned.

3. As regards the possible adoption of RMI obligations applicable to T Category vehicles:

- New RMI obligations may facilitate the entrance of new actors in the market, such as, for instance, independent repairers for large customers.

However, it should be analysed whether the proposed Type Approval Regulations, combined with the existing competition rules (i.e. Regulation 330/2010), are efficient enough to prevent manufacturers, authorised repairers and clients from the negative effects of free riding.

- New RMI obligations adapted to the specific characteristics of tractors may also be instrumental in the opening of the market for spare parts to independent repairers.
- As there seem to be important similarities between T Category vehicles and heavy duty vehicles, it could be analysed whether future RMI provisions for T Category vehicles may be similar to those already existing for heavy duty vehicles, while taking into account the specificities of the T Category Vehicles and of the aftermarket conditions.

4. As regards the possibility of adopting RMI obligations applicable to PTW/L Category vehicles:

Regulation 330/2010 and the European Commission Guidelines on Vertical Restraints are adequate tools to guarantee effective competition in the spare parts and the repair markets. For instance, the impact of RMI obligations as provided for in the Commission's proposal over the pricing of motorcycles seems to be a critical issue.

In addition, the new Type Approval Regulation should establish a transitional period allowing the industry to adapt its tools and policies to the new regulatory environment.

ANNEX 1 - QUESTIONNAIRE

Section I - General

1.	Please identify yourself as a stakeholder	
	• Association / Federation of vehicles manufacturers	
	• Association / Federation of spare parts manufacturers	
	• Association / Federation of independent repairers	
	• Other (please specify)	

2.	What is your main activity / the main activity of the members of your Association / Federation?

3.	Please indicate the Member States of the European Union where your Association / Federation and their members are present / represented							
	Austria		Finland		Latvia		Romania	
	Belgium		France		Lithuania		Slovakia	
	Bulgaria		Germany		Luxembourg		Slovenia	
	Cyprus		Greece		Malta		Spain	
	Czech Rep.		Hungary		Netherlands		Sweden	
	Denmark		Ireland		Poland		United Kingdom	
	Estonia		Italy		Portugal			

Section II - Relevant markets

4.	In the motor vehicles (M category) market		
	a.	Repairing is mainly ensured by independent repairers	
	b.	Repairing is mainly ensured by authorised repairers	
	c.	Repairing is equally ensured by independent repairers and authorised repairers	

5.	In the powered two wheelers (PTW; L category) market		
	a.	Repairing is mainly ensured by independent repairers	
	b.	Repairing is mainly ensured by authorised repairers	
	c.	Repairing is equally ensured by independent repairers and authorised repairers	

6.	In the tractor (T category) market		
	a.	Repairing is mainly ensured by independent repairers	
	b.	Repairing is mainly ensured by authorised repairers	
	c.	Repairing is equally ensured by independent repairers and authorised repairers	

7.	Do you think that independent repairers have a disadvantage vis-à-vis authorised repairers (concerning access to information for repair and maintenance) in the following markets			
	a.	Motor vehicles (M category)	YES:	NO:
	b.	Powered two-wheelers (PTW; L-category)	YES:	NO:
	c.	Tractor sector (T category)	YES:	NO:

8.	According to your knowledge of the market, in which of the following markets the repair process is more complicated/complex and access to information for repair and maintenance is more necessary:		
	a.	Motor vehicles (M category)	
	b.	Powered two-wheelers (PTW; L-category)	
	c.	Tractor sector (T category)	

Section III - Access to spare parts

9.	According to your knowledge of the market, have independent repairers full access to spare parts, including those that are only available from the vehicle manufacturer?		YES:		NO:	
	Please indicate the market your answer refers to:					
	a.	Motor vehicles (M category)				
	b.	Powered two-wheelers (PTW; L-category)				
	c.	Tractor sector (T category)				

10.	From your experience, is there any difference in terms of accessibility in the market for independent repairers to "original parts" (those made only by vehicles manufacturers or those parts on which vehicles manufacturers have an industrial property right) and "matching quality parts"?		
	•	It is more difficult to access to original parts than others	
	•	They are equally accessible	
	•	It is easier to access to original parts than others	

11.	According to the difference between "original parts" and "matching quality parts", would you say that the information needed to repair both types of pieces is equally accessible?		
	•	It is more difficult to find information related to original parts	
	•	Information related to original parts is as accessible as that related to matching quality parts	
	•	It is more difficult to find information related to matching quality pieces	

12.	The position that vehicle manufacturers hold as regards the supply of spare parts, has allowed them :				
	<ul style="list-style-type: none"> To close alternative channels of supply for spare parts? 	YES:		NO:	
	<ul style="list-style-type: none"> To fix high / excessive prices for spare parts? 	YES:		NO:	

Section IV - Accessibility and content of the information

13.	Do you consider that independent repairers have a more limited access to repair and maintenance information from manufacturers than authorised repairers?	YES:		NO:	
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14.	Are you satisfied with the current level of access to the needed repair and maintenance information for non authorised repairers?	YES:		NO:	
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15.	Why?				

16.	How you would rate the general availability of information by manufacturers for non-authorised repairers?				
	a. Green light				
	b. Amber light				
	c. Red light				

17.	Do the vehicle manufacturers withhold important documents or deliver certain information delayed (e.g. common faults or recall campaigns) to independent repairers?	YES:		NO:	
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18.	According to your knowledge, the following list of information to be provided by vehicle manufacturers to independent repairers, is enough for the needs of independent repairers when repairing/maintaining vehicles?	YES:		NO:	
	<ul style="list-style-type: none"> (a) the unique vehicle identification number; (b) service handbooks including repair and maintenance records; (c) technical manuals; (d) component and diagnosis information (such as minimum and maximum theoretical values for measurements); (e) wiring diagrams; (f) diagnostic trouble codes, including manufacturer-specific codes; (g) the software identification and calibration verification numbers applicable to a vehicle type; 				

	(h) information concerning, and delivered by means of, proprietary tools and equipment; (i) data record information and two-directional monitoring and test data; (j) work units.
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19.	If not, what other information should be included in that list?

20.	As an independent repairer, in order to have access to all the technical repair information needed, you visit the manufacturer web site. The information provided by manufacturers on their web pages is:															
	<table border="1"> <tr> <td>• Sufficient for single repair or maintenance</td> <td>YES:</td> <td></td> <td>NO:</td> <td></td> </tr> <tr> <td>• Provided in a readily accessible and prompt manner</td> <td>YES:</td> <td></td> <td>NO:</td> <td></td> </tr> <tr> <td>• Provided in a comprehensive manner</td> <td>YES:</td> <td></td> <td>NO:</td> <td></td> </tr> </table>	• Sufficient for single repair or maintenance	YES:		NO:		• Provided in a readily accessible and prompt manner	YES:		NO:		• Provided in a comprehensive manner	YES:		NO:	
• Sufficient for single repair or maintenance	YES:		NO:													
• Provided in a readily accessible and prompt manner	YES:		NO:													
• Provided in a comprehensive manner	YES:		NO:													

21.	From your experience, is there any specific information needed to repair/maintain vehicles which is especially difficult to find?	YES:		NO:	
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22.	Which one?

23.	When some repair information needed by independent repairers is not available immediately, is it possible to address a request directly to vehicle manufacturers?	YES:		NO:	
	In case of positive answer, is the time response of vehicle manufacturers acceptable or quick enough?	YES:		NO:	
	As a general rule, is the response received from vehicle manufacturers sufficient or useful enough to carry out the repair/maintenance?	YES:		NO:	

24.	Do you consider that the language in which the information from manufactures is provided entails an obstacle to access to that information?	YES:		NO:	
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25.	Choose one of the following options regarding terminology used in databases,															
	<table border="1"> <tr> <td>• Terminology used in different brands databases is similar / equivalent / standard.</td> <td>YES:</td> <td></td> <td>NO:</td> <td></td> </tr> <tr> <td>• Terminology used in different brands databases is different and it makes it difficult to deal with such a variety.</td> <td>YES:</td> <td></td> <td>NO:</td> <td></td> </tr> <tr> <td>• Terminology used in different brands databases is different but it doesn't make it difficult to understand all them.</td> <td>YES:</td> <td></td> <td>NO:</td> <td></td> </tr> </table>	• Terminology used in different brands databases is similar / equivalent / standard.	YES:		NO:		• Terminology used in different brands databases is different and it makes it difficult to deal with such a variety.	YES:		NO:		• Terminology used in different brands databases is different but it doesn't make it difficult to understand all them.	YES:		NO:	
• Terminology used in different brands databases is similar / equivalent / standard.	YES:		NO:													
• Terminology used in different brands databases is different and it makes it difficult to deal with such a variety.	YES:		NO:													
• Terminology used in different brands databases is different but it doesn't make it difficult to understand all them.	YES:		NO:													

26.	Do you think it is necessary, in order to improve the accessibility to the information, to make a list of homogeneous / standardised terms to be used in these databases?	YES:		NO:	

Section V - Medium of information

27.	The systems / tools used by the different manufactures to provide information on repair and maintenance (paper based tools, CDs, websites) are, in their layout, form, structure and content :				
	• Equal, standardised				
	• Similar				
	• Different				
	• Totally different				

28.	Do the different mediums to provide the information (e.g. different structures, layouts and qualities of the systems) used by manufacturers, make more difficult to obtain the relevant information by independent repairers?				
	• Yes				
	• No				
	• Not applicable, as manufacturers provide information in a standardised way				

29.	Do you think it is necessary to establish a standardised information format to be used by all manufacturers?	YES:		NO:	

30.	Which of the following supports would you prefer in order to obtain the information provided by manufacturers?				
	• Internet based (web site)				
	• CD-DVD based				
	• Paper based				

31.	Are the search methods within the manufactures websites user-friendly?	YES:		NO:	

32.	Which of the following features of a website do you consider useful when searching information (rate the usefulness from 1 to 5, taking into account that 1 means no useful at all and 5 means very useful):				
	• A tool which enables searching for specific words				
	• Links to relevant additional information				
	• Selective list for vehicle identification instead of witting it on your own				

33.	Is there a helpdesk where misinformation about repair/maintenance data from manufacturers or abuses of the system can be reported?	YES:		NO:	
	Do you think that such a helpdesk could be useful?	YES:		NO:	

34.	When an independent repairer visits a manufacturer's web page in order to find out information relating to a single repair and/or to a maintenance job on their products...		
	...the web page usually does not work		
	...some parts of the web page usually do not function properly		
	...the web page is always accessible		

Section VI - Updates

35.	Are independent repairers obtaining the information updates from manufacturers on time?	YES:		NO:	
36.	Which support would be the best in order to have access to the updates of the information for repair and maintenance?				
	• Through an instruction manual in paper				
	• Through the manufacturers' web page				
	• Through software				
	• Others				

Section VII - Warranties

37.	ADDRESSED TO REPAIRERS: Are you familiar with cases where manufacturers refuse to honor their warranties if independent repairers have carried out any work on the vehicle, even if that work had not a connection with the failure that led to the warranty being invoked?	YES:		NO:	
38.	ADDRESSED TO VEHICLE MANUFACTURERS: Why do you consider necessary/convenient to refuse to honor your warranties if independent repairers have carried out any work on the vehicle, even if that work had not a connection with the failure that led to the warranty being invoked?				

Section VIII – Information pricing

39.	Does the pricing of the information take into account the extent to which independent repairers use the information (i.e. frequency of request for information, complexity of the information provided, etc.)?	YES:		NO:	
40.	Are the information (for independent repairers) prices excessive?	YES:		NO:	

41.	Which of the following payment method would you prefer?		
	•	Pay for the concrete repair;	
	•	A subscription for a period of time;	

Section IX – Diagnostic tools

42.	ADDRESSED TO REPAIRERS: Are the special diagnostic tools needed for repair and servicing offered by manufacturers at fair prices?	YES:		NO:	
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43.	Could multi-brand diagnostic tools improve the access to repair and maintenance information for independent repairers?	YES:		NO:	
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44.	Are there obstacles in order to create a universal diagnostic tool?	YES:		NO:	
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45.	Which ones?				

ANNEX 2 - METHODOLOGY

The research has been based mainly on two lines of work. First, we have obtained information related to the market conditions by carrying out a **stakeholder consultation**, enabling to know first-hand the different views of interested parties, as without a clear picture of the functioning of the market and its actors concerns, every legal initiative at the European level could be useless. We have also based our work in **existing data and reports in the field**, many of them made by stakeholders by themselves or by the associations they are in.

Stakeholders consultation

The stakeholder consultation consisted of (i) a written consultation and (ii) a series of interviews with selected stakeholders. The aim of this consultation was to bring to light the relevant market conditions in these markets, to establish if there is any significant difference among the motor vehicles, the powered two-wheelers and the tractor sector that require specific regulation regarding the Access to Repair and Maintenance Information and, finally, to determine if the proposed requirements to access to RMI need reconsideration or not.

A **stakeholder list** has been elaborated, with the view of reaching the widest possible views on the issue of Access to RMI for independent repairers in each of the concerned markets. The list includes all stakeholders which would be significantly affected by the implementation of the Commission's draft regulations. 18 stakeholders were identified and asked to collaborate in this study. They are all associations or pools and can be classified according to their members' activity as follows:

- Aftermarket distributors
- Repairers
- Manufacturers
- Suppliers
- Engineers

Table 1: Stakeholders consulted

Name	Acronym	Response
Automotive Aftermarket Distributors	FIGIEFA	X
European Council for Motor Traders and Repairs	CECRA	X
Association Internationale des Réparateurs en Carrosserie	AIRC	
European Automobile Manufacturers Association	ACEA	
The Motorcycle Industry in Europe	ACEM	X
Association of Automotive Suppliers	CLEPA	X
European Agricultural Machinery	CEMA	X

Name	Acronym	Response
Asociación Española de Fabricantes de Automóviles y Camiones	ANFAC	
Confederación Española de Talleres de Reparación de Automóviles y Afines	CETRAA	
Asociación Nacional del Sector de Maquinaria Agrícola y Tractores	ANSEMAT	X
Fédération Belge des Industries de l'Automobile et du Cycle ' réunies	FEBIAC	
Confédération Belge du Commerce et de la Réparation Automobiles et des Secteurs Connexes	FEDERAUTO	
Fédération des Entreprises de Vente de pièces de rechange d'Autos et de Recyclage	FEVAR	
Associação Nacional das Empresas do Comércio e da Reparação Automóvel	ANECRA	
Associação Automóvel de Portugal	ACAP	
Society of Motor Manufacturers and Traders	SMMT	
The Vehicle Builders and Repairers Association Ltd.	VBRA	X
Agricultural Engineers Association	AEA	X

Moreover, two national members of CEMA provided with their answers: **AXEMA** (French association of manufacturers of agricultural equipments) and **POETTINGER** (Alois Pöttinger Maschinenfabrik Ges.m.b.H-Austria). Their answers are the same as provided by CEMA.

Furthermore, as a member of CEMA, **AEA** (Agricultural Engineers Association) sent a position paper containing the following text:

"In support of the industry's European association – CEMA – the AEA is opposed to the inclusion of Chapter XVI in the proposed agricultural and forestry vehicles "mother regulation". The detailed arguments have been set out elsewhere. We are however encouraged by the request made to your firm by the European Parliament to establish the facts in the market for our products.

A mild criticism of the Questionnaire might be that it lacks structural balance. The questions are geared towards seeking information and opinion that will strengthen the position of those advocating the grant of new legal rights to independent repairers.

- *What customer disadvantages do you envisage could result from the existence in agriculture of unskilled repair services?*
- *Before the automobile industry was required to make diagnostic information available a considerable industry of independent repair had developed. What are the factors that have prevented an economically sustainable independent repair service sector from becoming established for agricultural vehicles?*
- *Is the release of staff for product training a standard requirement in agricultural vehicle distribution agreements?*
- *If independent repairer rights are granted do you think that compulsory product training should be a pre-condition to the supply of specialist information?*
- *Do you agree that the fitting of inferior quality parts with the customer's knowledge is an acceptable practice?*

Comments on particular questions in the survey:

Question 7 is loaded. It is of course the position that a repairer who does not have access to specialist product knowledge is at a disadvantage. So much was acknowledged by the European Court in a series of cases leading to undertakings given by a number of motor manufacturers. The responsibility of law makers is however wider. Looking at the particular product sector, an assessment should also be made of (a) the need for the service [your survey is an attempt to gauge that on their behalf] and (b) the consequences for the ultimate efficiency and quality of the service available to end-users.

Question 8 – The respondent trade associations will have a detailed knowledge of one sector only and are unlikely to be in a position to make an informed comparative assessment.

Question 9 – 12. Agricultural vehicle distribution in the UK is organised using exclusive distribution agreements. Under Commission Regulation 330/2010 [vertical agreements] the manufacturer cannot prevent the onward sale of spare-part components to unauthorised repairers who are not themselves making competing products. The distributor determines the final price of sale. The same Regulation precludes manufacturers from restricting the supply of OEM parts made for them by component makers, to “repairers or other service providers not entrusted by the buyer with the repair or servicing of his goods” [Article 4(e)].

Question 38. In the UK the manufacturer's warranty or guarantee is collateral to the contract of sale. It is of course a feature in the total package of goods that the customer is buying and there is no single form of warranty on offer universally within the industry.

However in so far as warranties may decline a full service if the vehicle has been repaired by a third party, one justification is that a poor repair away from the point of breakdown may have contributed to the claim but indirectly changing stress of operation temperature levels and in dispute, it has sometimes been difficult to prove (or disprove) a causal relationship. In order to cover the situation a manufacturer may wish to shape his offer to take this into account. If forced to accept third party repair, the supplier may wish to review other elements of the customer warranty used to accompany future sales.”

Finally, **CNH** Global (which is engineering, producing and selling agricultural tractors, under the Brands New Holland, Case IH and Steyr) did not respond to the questionnaire but provided Gómez-Acebo & Pombo Abogados, instead, with a written contribution.

Interviews with selected stakeholders

Pursuant to an analysis of the responses to the written consultation, stakeholders were selected for meetings to be held during the first week of June. The appropriate stakeholders were chosen by Gómez-Acebo & Pombo in order to cover each of the categories of activities involved (cars' manufacturers, tractor's manufacturers, motorcycles manufacturers, suppliers and independent repairers).

STAKEHOLDER	PEOPLE ATTENDING	DAY	TIME
FIGIEFA – Automotive Aftermarket Distributors	FIGIEFA: - Sylvia Gotzen, Secretary General; - Elisabeth Gaultie, Policy Officer; - Eléonore van Haute, Policy Officer.	06-JUNE	11:30
CECRA – European Council for Motor Traders and Repairs	CECRA: - Bernard Lycke, Executive Director		
ACEA - European Automobile Manufacturers Association	- Marc Greven, Director legal affairs & taxation	06-JUNE	15:00
CEMA - European Agricultural Machinery	Gilles Dryancour, President of CEMA - Ivo Hostens, Technical manager Ralf Wezel	06-JUNE	17:00
ACEM	- Antonio Perlot, Public Affairs Manager	07-JUNE	9:30
CLEPA	- Josef Frank, Aftermarket Director	07-JUNE	11:30

Output of these interviews is included in the present Legal Report.

ANNEX 3 - OVERALL ANALYSIS OF THE ANSWERS TO THE QUESTIONNAIRE

NOTE 1: Answers provided by AXEMA, POETTINGER and ANSEMAT are coincident with CEMA answers. Only when diverging, they are explicitly mentioned in this Annex.

NOTE 2: On 14th June 2011, 3 new answers to the questionnaire were received from the following entities:

- FIGIEFA: Automotive Aftermarket Distributors
- L'AUTOMOBILE CLUB: Association Francaise des Automobilistes
- FIA : Federation International de l'Automobile

Section II - Relevant markets

4. When asked about repairing in the motor vehicle (M category)

- VBRA – The Vehicle Builders and Repairers Association Ltd., CECRA – European Council for Motor Trades and Repairers and CLEPA – Association of Automotive Suppliers Considered that repairing is equally ensured by independent repairers and authorised repairers.
- CEMA – European Agricultural Machinery and ACEM – The Motorcycle Industry in Europe, did not answer this question.

5. When asked about repairing in the powered two wheelers (PTW; L category) market

- VBRA – The Vehicle Builders and Repairers Association Ltd., CLEPA – Association of Automotive Suppliers and ACEM – The Motorcycle Industry in Europe considered that repairing is equally ensured by independent repairers and authorised repairers.
- CEMA – European Agricultural Machinery did not answer this question.

6. When asked about repairing in tractor (T category) market

- VBRA – The Vehicle Builders and Repairers Association Ltd. and ACEM – The Motorcycle Industry in Europe, did not answer this question.
- CLEPA – Association of Automotive Suppliers considered that repairing is equally ensured by independent repairers and authorised repairers.
- CEMA – European Agricultural Machinery answered that repairing is mainly ensured by authorised repairers.
- CECRA - European Council for Motor Trades and Repairers did not answer this question.

7. When asked whether independent repairers have a disadvantage vis-à-vis authorised repairers (concerning access to information for repair and maintenance) in the following markets:

- ACEM – The Motorcycle Industry in Europe considered that there is NOT such disadvantage in the powered two-wheelers (PTW; L category) sector.
- VBRA – The Vehicle Builders and Repairers Association Ltd. Answered that there is such disadvantage in M and PTW/L category.
- CLEPA – Association of Automotive Suppliers considered that there is such disadvantage in all categories.
- CECRA - European Council for Motor Trades and Repairers did not answer this question with reference to L category but they did with reference to M category. In that market they considered that independent repairers have a disadvantage vis-à-vis authorised repairers.
- CEMA – European Agricultural Machinery considered that there is not such disadvantage concerning T category. Moreover CEMA pointed out that:

“For tractors, and that will be the main vehicle of concern when discussing RMI, there are no independent repairers and therefore there are no databases with information that can be bought for fees. There are no websites that provide maintenance and repair information for independent repairers and there is absolutely no proof that there is an urgent need to change the current situation.

In fact even in the existing dealer networks it is expected that restructuring is necessary with as result the disappearance of many authorised dealers. The main problem is the large amounts of information that needs to be collected and updated, the cost of the dedicated tools and the high quality service level that needs to be attained. Therefore smaller dealers become dependent of large dealers/importers and middle size dealers will grow or disappear. Given this situation, the likelihood that independent repairers would be interested in the sector is very small.

The current system allows full control of the manufacturer with the great benefit that the high levels of tractor’s operator safety and protection of the environment as dictated by legislation is ensured. There is no indication that independent repairers would take up there responsibility as no specific conditions are set inside the new regulation for type approval of agricultural vehicles. A minimum requirement would be that each repairer has received from the manufacturer the appropriate training and has the necessary qualifications to perform delicate (to be specified) repair and maintenance tasks. For safety reasons the manufacturer should also be able to restrict very sensitive information if certain conditions are not met. Such is not strongly enough reflected in the regulation.

In general we believe that for the majority of the cases this requirements for manufacturers will only create additional administrative burden for manufacturers and will not enhance the freedom of services to be offered to customers as envisaged in the automotive sector. The multitude of types of vehicles, the limited sale volumes and the complexity of the vehicles make it in fact incomparable to the automotive sector.”

"Manufacturers of agricultural and forestry vehicles are free in the organization of their distribution system and dealer network. The large manufacturers in Europe sell their agricultural machinery via exclusive, single-brand dealers ("authorised dealers") which have to meet certain qualitative criteria, like trained sales staff, carrying a full product range, maintaining sufficient inventories and guaranteeing high quality after-sales service, like repair and maintenance. These requirements are in compliance with the European Commission Block Exemption Regulation No 330/2010 on Vertical Restraints ("Regulation 330/2010").

For agricultural vehicles there are no independent repairers.

There are also no databases with information or websites with specific information for independent repairers.

The questions below are therefore redundant. This questionnaire starts with the pre-assumption that the regulation with free access to repair and maintenance information is already in place and that independent repairers for agricultural vehicles exist. Such is not the case.

The current dealer network is such organised that restructuring will need to take place. The density of dealers is too high and expected is that only large dealers and very small subdealers dependent of a larger dealer or importer will survive. Reason is the high level of complexity of these vehicles, the cost of specialised tools, the high diversity in vehicle-implement combinations and the need for high quality services.

It has never been fully assessed whether a real need exists for free access for repair and maintenance information in the T category vehicles. The below questions disregard the reality of the market and disregard other factors like

- the necessity to control the aftermarket to ensure operator and bystander safety and protection of the environment as dictated by different pieces of legislation.*
- The administrative burden for manufacturers in setting up websites and updating information for parts and maintenance information in areas where no interest from parts manufacturers and independent repairers exist. With hundreds of different types of vehicles and often sale volumes between 100 and 1000 units, this market is not comparable to the car industry with more than 100.000 units per type.*

Authorised dealers always use the latest standard of replacement parts during a service or repair. The information they have and their stock held is continually up-dated to ensure the highest level of quality is maintained. An independent repairer would not invest money to hold slow moving parts. Their stock would not be purged of parts subsequently revised by the manufacturer. This leads to a lower standard of repair than that provided by the authorised dealer. At the extreme this could lead to safety implication if they are fitting parts withdrawn by the manufacturer for safety reasons."

8. When asked in which market the repair process is more complicated/complex and access to information for repair and maintenance is more necessary:

- VBRA – The Vehicle Builders and Repairers Association Ltd. Answered motor vehicles (M category).
- CLEPA – Association of Automotive Suppliers considered answered that the process is equal among all categories.
- CEMA – European Agricultural Machinery answered that tractors (T category) have more complicated repair processes.
- ACEM – The Motorcycle Industry in Europe did not answer this question.
- CECRA - European Council for Motor Trades and Repairers considered Motor vehicles (M category) the most complicated market and pointed out that *all categories of vehicles require modern and complex repair and maintenance processes, as the multiplication and complexification of OBD technology and ECUs make the access to RMI crucial.*

Section III - Access to spare parts

9. When asked whether independent repairers have full access to spare parts, including those that are only available from the vehicle manufacturer?

- Among the positive answers,
 - o VBRA – The Vehicle Builders and Repairers Association Ltd. (in M category).
 - o ACEM – The Motorcycle Industry in Europe (in PTW; L category)
- Among the negative answers,
 - o CLEPA – Association of Automotive Suppliers (in all categories)
 - o CECRA - European Council for Motor Trades and Repairers
 - o CEMA – European Agricultural Machinery did not answer the question.

10. When asked if is there any difference in terms of accessibility in the market for independent repairers to “original parts” (those made only by vehicles manufacturers or those parts on which vehicles manufacturers have an industrial property right) and “matching quality parts”?

- The following stakeholders responded that they are equally accessible:
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o CLEPA – Association of Automotive Suppliers.
 - o ACEM – The Motorcycle Industry in Europe.
 - o CECRA - European Council for Motor Trades and Repairers answered that for independent is more difficult to access to original parts than others both in motor vehicles and powered two wheels markets.
- CEMA – European Agricultural Machinery did not answer the question.

11. When asked about the difference between “original parts” and “matching quality parts,

- The following stakeholders answered that it is more difficult to find information related to matching quality pieces:
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.

- The following stakeholders answered that it is more difficult to find information related to original parts:
 - o CECRA - European Council for Motor Trades and Repairers.
- The following stakeholders answered information is equally accessible:
 - o CLEPA – Association of Automotive Suppliers.
 - o ACEM – The Motorcycle Industry in Europe.
 - o CEMA – European Agricultural Machinery did not answer the question.

12. When asked whether the position that vehicle manufacturers hold as regards the supply of spare parts...

...has allowed them to close alternative channels of supply for spare parts

- The following answer positively
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o CLEPA – Association of Automotive Suppliers considered (only for captive parts).
 - o CECRA - European Council for Motor Trades and Repairers.
 - o CEMA – European Agricultural Machinery did not answer the question.
- The following answered negatively:
 - o ACEM – The Motorcycle Industry in Europe.

...has allowed them to fix high / excessive prices for spare parts

- The following answered positively:
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o CLEPA – Association of Automotive Suppliers considered (only for captive parts).
 - o CECRA - European Council for Motor Trades and Repairers.
 - o CEMA – European Agricultural Machinery did not answer the question.
- The following answered negatively:
 - o ACEM – The Motorcycle Industry in Europe.

Section IV - Accessibility and content of the information

13. When asked whether independent repairers have a more limited access to repair and maintenance information from manufacturers than authorised repairers?

- The following stakeholders answered positively:
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o CLEPA – Association of Automotive Suppliers.
 - o ACEM – The Motorcycle Industry in Europe.
 - o CECRA - European Council for Motor Trades and Repairers.
 - o CEMA – European Agricultural Machinery did not answer the question.

14. When asked whether they are satisfied with the current level of access to the needed repair and maintenance information for non authorised repairers?

- The following stakeholders responded negatively:
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o CLEPA – Association of Automotive Suppliers.

- CECRA - European Council for Motor Trades and Repairers.
- The following stakeholders answered positively:
 - ACEM – The Motorcycle Industry in Europe.
 - CEMA – European Agricultural Machinery did not answer the question.

15. When asking about the reasons of the previous question we had the following ones:

Among the stakeholder who responded negatively, **VBRA** indicated that some independent repairers have more difficulty in obtaining repair information, specially for new products and models.

CLEPA stated that independent repairers also need the information from Independent Operators. As defined by point 13 of Article 3 to Regulation (EC) NO 595/2009 "13. *Independent operator means undertakings other than authorised dealers and repairers which are directly or indirectly involved in the repair and maintenance of motor vehicles, in particular repairers, manufacturers or distributors of repair equipment, tools or spare parts, publishers of technical information, automobile clubs, roadside assistance operators, operators offering inspection and testing services, operators offering training for installers, manufacturers and repairers of equipment for alternative fuel vehicles*". **CECRA** gave two different answers, one for L-category market and another one for M-category market:

- L-category market: *"At present vehicle manufacturers do not provide access to their web-based technical repair & maintenance information databases for independent operators. This situation is mainly due to the fact that there are no existing legal provisions on the access to RMI for independent aftermarket operators in the L-category vehicles sector; without such provisions, the access to RMI is practically impossible for independents"*.
- M-category market: *"The information provided is generally incomplete. Missing items are inter alia information for parts identification, software updates and reprogramming information."*

Among the stakeholder who responded positively, **ACEM** indicated that *"ACEM is not aware of the current level of access to RMI having generated any problem or complaint, by non authorised repairers or consumers. As mentioned, repairing in the sector is equally ensured by independent repairers and authorised repairers. Most repairers are multi-brand, and it is common knowledge that official dealers for one brand also act as independent repairers for various other brands."*

CEMA – European Agricultural Machinery did not answer the question.

16. Concerning the rating of the general availability of information by manufacturers for non-authorised repairers, the stakeholders gave the following answers:

- VBRA – The Vehicle Builders and Repairers Association Ltd. and CLEPA – Association of Automotive Suppliers rated the situation with amber light.
- ACEM – The Motorcycle Industry in Europe rated the situation with green light.
- CEMA – European Agricultural Machinery did not answer the question.
- CECRA - European Council for Motor Trades and Repairers rated the situation with red light in powered two-wheeled vehicles and amber light in motor vehicles.

17. When asked whether vehicle manufacturers withhold important documents or deliver certain information delayed (e.g. common faults or recall campaigns) to independent repairers,

- The following stakeholders responded positively:
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o CECRA - European Council for Motor Trades and Repairers responded positively but he pointed out that, in L-category market, *“denial of access to websites seriously delays and hampers independent repair and maintenance”* while in M-category market the lack of information affects *mainly the parts identification data, which is crucial for any repair job.*
- The following stakeholders responded negatively:
 - o ACEM – The Motorcycle Industry in Europe
- The following stakeholders did not answer:
 - o CLEPA – Association of Automotive Suppliers
 - o CEMA – European Agricultural Machinery did not answer the question.

18. When asked whether the list of information contained in the two projects to be provided by vehicle manufacturers to independent repairers, is enough for the needs of independent repairers when repairing/maintaining vehicles,

- The following stakeholders responded positively:
 - o ACEM – The Motorcycle Industry in Europe.
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o CLEPA – Association of Automotive Suppliers did not answer.
- The following stakeholders responded negatively:
 - o CEMA – European Agricultural Machinery.
 - o CECRA - European Council for Motor Trades and Repairers.

19. CLEPA – Association of Automotive Suppliers, underlined that independent repairers need information from generic Independent Operators, not only from the OEMs.

CEMA – European Agricultural Machinery stated that *“if proper maintenance and repair is requested, then also proper training and qualification is necessary as provided by the manufacturer. That should be a precondition to provide any information”*.

ACEM – The Motorcycle Industry in Europe stated that *“Anti-theft devices information for all L Category and anti-tampering devices information for L1 and L2, L3A1 should be EXCLUDED in that list”*.

CECRA - European Council for Motor Trades and Repairers considered different information should be included in L-category and M-category market:

- In L-category market, the following information should be, according to their view, included in the list:
 - *“Unequivocal vehicle identification by VIN and product features*
 - *Service bulletins*
 - *Diagnostics information*
 - *Spare parts*
 - *Spare parts identification data*

- *Service schedules*
- *Recall information*
- In M-category market, they pointed out that *"With the latest Euro 5/6 amendments package, the list of technical information is relatively comprehensive. However, the information is not yet given de facto in practice. As example, the technical information for diagnostic tool producers is not yet made available, and thus multi-brand tools are still hampered in their functionality. Moreover, recalls and 'silent' changes are often not made available to Independents at the same time as to authorised repairers"*.

20. When asked, as an independent repairer, whether the RMI provided by manufacturers on their web pages is:

- Sufficient for single repair or maintenance, VBRA – The Vehicle Builders and Repairers Association Ltd. and CLEPA – Association of Automotive Suppliers answered positively, while CECRA - European Council for Motor Trades and Repairers answered negatively.
- Provided in a readily accessible and prompt manner, VBRA – The Vehicle Builders and Repairers Association Ltd. and CECRA - European Council for Motor Trades and Repairers answered negatively.
- Provided in a comprehensive manner, CECRA - European Council for Motor Trades and Repairers answered negatively again.
- CEMA – European Agricultural Machinery, CEMA – European Agricultural Machinery and ACEM – The Motorcycle Industry in Europe did not answer the question.

In this question, CECRA considered necessary to point out that *"In the absence of any legal provision on the access to RMI for independent repairers, at present they have NO ACCESS to vehicle manufacturers' websites."*

21. When asked whether there any specific information needed to repair/maintain vehicles which is especially difficult to find,

- VBRA – The Vehicle Builders and Repairers Association Ltd., CECRA - European Council for Motor Trades and Repairers and ACEM – The Motorcycle Industry in Europe answered positively.
- CLEPA – Association of Automotive Suppliers and CEMA – European Agricultural Machinery did not answer the question.

22. They were asked to say which information they considered especially difficult to find and these were their answers:

- According to VBRA – The Vehicle Builders and Repairers Association Ltd. view: *Torque settings/electronic information for diagnostic and code clearing/SRS systems.*
- ACEM – The Motorcycle Industry in Europe underlined that *"Anti-theft devices for all L category and anti-tampering devices information for L1, L2, L3A1"* are the most difficult to find.
- CECRA - European Council for Motor Trades and Repairers make a difference, again, between L-category and M-category markets:

- In L-category market they consider especially difficult to find information related to the following issues: Work Units, Inspection data, Spare part identification, Wiring diagrams, Error codes and Software updates for multibrand diagnostic tools.
- In M-category market they consider specially difficult to find information related to the following issues: Work units, Spare part identification and Software updates that can be carried out with multibrand diagnostic tools.
- CEMA – European Agricultural Machinery did not answer the question.

23. When asked whether is possible to address a request directly to vehicle manufacturers, when some repair information needed by independent repairers is not available immediately,

- VBRA – The Vehicle Builders and Repairers Association Ltd. and ACEM – The Motorcycle Industry in Europe answered positively.
- CECRA - European Council for Motor Trades and Repairers answered negatively and pointed out that *“Independent repairers generally first turn to their authorised repairers colleagues for such requests”*.
- CLEPA – Association of Automotive Suppliers and CEMA – European Agricultural Machinery did not answer the question.

In case of positive answer, is the time response of vehicle manufacturers acceptable or quick enough?

- VBRA – The Vehicle Builders and Repairers Association Ltd. answered positively.
- CEMA – European Agricultural Machinery and ACEM – The Motorcycle Industry in Europe did not answer the question.

As a general rule, is the response received from vehicle manufacturers sufficient or useful enough to carry out the repair/maintenance?

- VBRA – The Vehicle Builders and Repairers Association Ltd. and ACEM – The Motorcycle Industry in Europe answered positively.
- CECRA - European Council for Motor Trades and Repairers answered negatively and noted that *“Vehicle manufacturers require repairers to use their VM-branded diagnostic tools; due to lack of access to technical information for multi-brand diagnostic tool producers, this makes the necessary software updates impossible for independent repairers.”*
- CEMA – European Agricultural Machinery did not answer the question.
- According to CECRA - European Council for Motor Trades and Repairers, *“this question highlights the importance of independent data publishers who provide this information in an accurate and timely manner”*.

24. When asked whether the language in which the information from manufactures is provided entails an obstacle to access to that information,

- VBRA – The Vehicle Builders and Repairers Association Ltd. and CLEPA – Association of Automotive Suppliers, and ACEM – The Motorcycle Industry in Europe answered negatively.

- CECRA - European Council for Motor Trades and Repairers considered it an obstacle in M-category market but not in L-category market.
- CEMA – European Agricultural Machinery did not answer the question.

25. When asked about terminology used in databases,

- CLEPA – Association of Automotive Suppliers, CECRA - European Council for Motor Trades and Repairers and VBRA – The Vehicle Builders and Repairers Association Ltd. answered that terminology used in different brands databases is different and it makes it difficult to deal with such a variety.
- CEMA – European Agricultural Machinery and ACEM – The Motorcycle Industry in Europe did not answer the question.

26. When asked whether it is necessary to improve the accessibility to the information, to make a list of homogeneous / standardised terms to be used in these databases?

- The following stakeholders answered negatively:
 - o ACEM – The Motorcycle Industry in Europe.
- The following stakeholders answered positively:
 - o CECRA - European Council for Motor Trades and Repairers.
 - o CLEPA – Association of Automotive Suppliers.
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
- CEMA – European Agricultural Machinery did not answer the question.

Section V - Medium of information

27. When asked about how the systems / tools used by the different manufactures to provide information on repair and maintenance (paper based tools, CDs, websites) are, in their layout, form, structure and content,

- The following stakeholders answered that they are different:
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o ACEM – The Motorcycle Industry in Europe.
- Answered that they are totally different:
 - o CLEPA – Association of Automotive Suppliers.
 - o CECRA - European Council for Motor Trades and Repairers.
 - o CEMA – European Agricultural Machinery did not answer the question.

28. When asked whether the different mediums to provide the information (e.g. different structures, layouts and qualities of the systems) used by manufacturers, make more difficult to obtain the relevant information by independent repairers

- The following stakeholders answered negatively:
 - o ACEM – The Motorcycle Industry in Europe.
- The following stakeholders answered positively:
 - o CLEPA – Association of Automotive Suppliers.
 - o CECRA - European Council for Motor Trades and Repairers.
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o CEMA – European Agricultural Machinery did not answer the question.

29. When asked whether it is necessary to establish a standardised information format to be used by all manufacturers

- The following stakeholders answered negatively:
 - o ACEM – The Motorcycle Industry in Europe.
- The following stakeholders answered positively:
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o CECRA - European Council for Motor Trades and Repairers.
 - o CLEPA – Association of Automotive Suppliers.
 - o CEMA – European Agricultural Machinery did not answer the question.

30. When asked about which support is the most convenient in order to obtain the information provided by manufacturers?

- VBRA – The Vehicle Builders and Repairers Association Ltd. answered both Internet based (web site) and CD-DVD based.
- CLEPA – Association of Automotive Suppliers answered Internet based web site, (processable for IO) as well as CECRA - European Council for Motor Trades and Repairers that answered internet based *“and as electronically processable data”*.
- CEMA – European Agricultural Machinery and ACEM – The Motorcycle Industry in Europe did not answer the question.

31. When asked whether the the search methods within the manufactures websites user-friendly?

- CLEPA – Association of Automotive Suppliers, CECRA - European Council for Motor Trades and Repairers (regarding M-category market) and VBRA – The Vehicle Builders and Repairers Association Ltd. answered negatively.
- CECRA - European Council for Motor Trades and Repairers considered that the question was not applicable to L-category sector as, in that market, websites are not accessible to independent repairers.
- CEMA – European Agricultural Machinery and ACEM – The Motorcycle Industry in Europe did not answer the question.

32. When asked which of the following features of a website do you consider useful when searching information (rate the usefulness from 1 to 5, taking into account that 1 means no useful at all and 5 means very useful):

- A tool which enables searching for specific words.
- Links to relevant additional information.
- Selective list for vehicle identification instead of witting it on your own.

- CECRA - European Council for Motor Trades and Repairers ranked the two first with a 1, while commented regarding the last one that *“Vehicle identification by VIN (vehicle identification number) as well as by product features would be required”*.
- VBRA ranked all of them with a 4.
- The following stakeholders did not answer the question:
 - o CEMA – European Agricultural Machinery.
 - o ACEM – The Motorcycle Industry in Europe.
 - o CLEPA – Association of Automotive Suppliers.

33. Is there a helpdesk where misinformation about repair/maintenance data from manufacturers or abuses of the system can be reported?

- The following stakeholders answered negatively:
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o ACEM – The Motorcycle Industry in Europe.
 - o CECRA - European Council for Motor Trades and Repairers.
- The following stakeholders did not answer:
 - o CLEPA – Association of Automotive Suppliers.
 - o CEMA – European Agricultural Machinery did not answer the question.

Do you think that such a helpdesk could be useful?

- The following stakeholders answered positively:
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o CECRA - European Council for Motor Trades and Repairers.
- The following stakeholders answered negatively:
 - o ACEM – The Motorcycle Industry in Europe.
- The following stakeholders did not answer the question:
 - o CLEPA – Association of Automotive Supplier.
 - o CEMA – European Agricultural Machinery.

34. When asked about the functionality of the manufacturer's web page in order to find out information relating to a single repair and/or to a maintenance job on their products...

- VBRA – The Vehicle Builders and Repairers Association Ltd. and CECRA - European Council for Motor Trades and Repairers answered that *"...some parts of the web page usually do not function properly"*.
- However, CECRA - European Council for Motor Trades and Repairers considered the question was not applicable for L-category market, as websites are, according to their view, not accessible to independent repairers.
- The following did not answer the question:
 - o ACEM – The Motorcycle Industry in Europe.
 - o CLEPA – Association of Automotive Suppliers did not answer.
 - o CEMA – European Agricultural Machinery.

Section VI – Updates

35. When asked whether independent repairers obtain the information updates from manufacturers on time?

- CLEPA – Association of Automotive Supplier, CECRA - European Council for Motor Trades and Repairers and VBRA – The Vehicle Builders and Repairers Association Ltd. answered negatively.
- The following stakeholders did not answer the question:
 - o CEMA – European Agricultural Machinery
 - o ACEM – The Motorcycle Industry in Europe

36. Which support would be the best in order to have access to the updates of the information for repair and maintenance?

- VBRA – The Vehicle Builders and Repairers Association Ltd. answered both through an instruction manual in paper and through the manufacturers' web page.
- CECRA - European Council for Motor Trades and Repairers, preferred both through the manufacturers' web page or through software but pointed out that, in the M-category market, other kind of support would be appropriate to have quick access to the updates, because *"as multi-brand repairers work in a multi-brand environment where different vehicle makes and models have to be serviced and repaired every day, independent data publisher are crucial for the daily work. They offer multi-brand information databases encompassing all the technical data for all vehicle brands and models in one database (same "look and feel") tailored to the needs of independent repairers."*
- The following did not answer the question:
 - o CLEPA – Association of Automotive Suppliers did not answer.
 - o CEMA – European Agricultural Machinery.
 - o ACEM – The Motorcycle Industry in Europe.

Section VII - Warranties

37. When asked whether repairers were familiar with cases where manufacturers refuse to honor their warranties if independent repairers have carried out any work on the vehicle, even if that work had not a connection with the failure that led to the warranty being invoked,

- The following stakeholders did not answer the question:
 - o VBRA - The Vehicle Builders and Repairers Association Ltd.
 - o CLEPA – Association of Automotive Suppliers.
 - o CEMA – European Agricultural Machinery.
 - o ACEM – The Motorcycle Industry in Europe.
 - o CECRA - European Council for Motor Trades and Repairers answered affirmatively.

38. When vehicle manufacturers were asked about the reasons because of which they consider necessary/convenient to refuse to honor your warranties if independent repairers have carried out any work on the vehicle, even if that work had not a connection with the failure that led to the warranty being invoked,

- The following did not answer the question.
 - o VBRA - The Vehicle Builders and Repairers Association Ltd.
 - o CLEPA – Association of Automotive Suppliers.
 - o CEMA – European Agricultural Machinery.
 - o CECRA - European Council for Motor Trades and Repairers.
- ACEM – The Motorcycle Industry in Europe, indicated that "ACEM is not aware of any such situation having arisen".

Section VIII – Information pricing

39. They were asked about the pricing: Does the pricing of the information take into account the extent to which independent repairers use the information (i.e. frequency of request for information, complexity of the information provided, etc.)?

- VBRA – The Vehicle Builders and Repairers Association Ltd. answered negatively.
- CLEPA – Association of Automotive Suppliers answer positively.
- CECRA - European Council for Motor Trades and Repairers said: *"The price of the information required to independent data publishers and multibrand tool producers is generally disproportionate"*.
- The following did not answer the question:
 - o CEMA – European Agricultural Machinery.
 - o ACEM – The Motorcycle Industry in Europe.

40. When asked whether the information (for independent repairers) prices excessive?

- VBRA – The Vehicle Builders and Repairers Association Ltd. and CLEPA – Association of Automotive Suppliers answer positively.
- ACEM – The Motorcycle Industry in Europe answered negatively.
- CECRA - European Council for Motor Trades and Repairers commented: *"It is sometimes difficult to judge on a 'right' price for the information provided to independent repairers, considering that authorised repairers may obtain the information in a different manner (e.g. as included in their bonus packages). Hence, there is no benchmark to issue any comparison."*
- CEMA – European Agricultural Machinery did not answer the question.

41. Which of the following payment method would you prefer?

- VBRA – The Vehicle Builders and Repairers Association Ltd. answered that they would prefer to pay a subscription for a period of time;
- CLEPA – Association of Automotive Suppliers and CECRA - European Council for Motor Trades and Repairers considered convenient both methods.
- The following did not answer the question:
 - o CEMA – European Agricultural Machinery.
 - o ACEM – The Motorcycle Industry in Europe.

Section IX – Diagnostic tools

42. Are the special diagnostic tools needed for repair and servicing offered by manufacturers at fair prices?

- VBRA – The Vehicle Builders and Repairers Association Ltd. answered negatively.
- In this question, CECRA - European Council for Motor Trades and Repairers, answered that *"In the absence of multibrand tools, the need to buy as many tools as vehicle brands makes the operation too expensive for independent workshops."*
- The following did not answer the question:
 - o CLEPA – Association of Automotive Suppliers.
 - o CEMA – European Agricultural Machinery.
 - o ACEM – The Motorcycle Industry in Europe.

43. When asked whether multi-brand diagnostic tools improve the access to repair and maintenance information for independent repairers,

- The following stakeholders answered positively:
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o ACEM – The Motorcycle Industry in Europe.
 - o CECRA - European Council for Motor Trades and Repairers.
- The following ones did not answer the question:
 - o CLEPA – Association of Automotive Suppliers.
 - o CEMA – European Agricultural Machinery.

44. When asked whether there are obstacles in order to create a universal diagnostic tool,

- The following stakeholders answered positively:
 - o VBRA – The Vehicle Builders and Repairers Association Ltd.
 - o ACEM – The Motorcycle Industry in Europe.
 - o CECRA - European Council for Motor Trades and Repairers.
- The following stakeholders did not answer:
 - o CLEPA – Association of Automotive Suppliers.
 - o CEMA – European Agricultural Machinery did not answer the question.

45. When asked which are the obstacles to create this universal or multibrand diagnostic tool,

- **VBRA** – The Vehicle Builders and Repairers Association Ltd. answered that *"manufacturers use different equipment which is "licensed" to their brand only –this creates unfairness and high prices. Generic equipment should be acceptable chosen by the repairer. Some manufacturers will not supply ALL the relevant information giving more support to their own networks above independent repairers"*.
- **CLEPA** – Association of Automotive Suppliers and **CEMA** – European Agricultural Machinery did not answer the question.
- **ACEM** – The Motorcycle Industry in Europe indicated that *"Connectors would need to be standardised and different communication protocols used by manufacturers readable by by the universal diagnostic tool. These are not fundamental obstacles, but they should be taken into account"*.
- **CECRA** - European Council for Motor Trades and Repairers considered that *"Access to technical information is absolutely crucial, as it is necessary for the full functionality of multibrand diagnostic tools. However this technical information is not always provided by vehicle manufacturers to tool manufacturers. This is why legal provisions for L-category vehicles are so important."*

ANNEX 4 - BIBLIOGRAPHY

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