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DISTRIBUTION OF MOTOR VEHICLES

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EXPLANATORY BROCHURE



EUROPEAN COMMISSION

General Directorate IV - Competition

COMMISSION REGULATION (EC) No 1475/95 OF 28 JUNE 1995
ON THE APPLICATION OF ARTICLE 85(3) OF THE TREATY TO CERTAIN CATEGORIES
OF MOTOR VEHICLE DISTRIBUTION AND SERVICING AGREEMENTS

- AN INTRODUCTORY GUIDE -

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Foreword

In the Member States of the European Union, motor vehicle manufacturers distribute their products through selected dealer networks. The distribution agreements making up the networks contain provisions which restrict competition and which may affect trade between Member States. Therefore they fall within the scope of Article 85(1) of the EC Treaty.

The prohibition laid down in Article 85(1) of the EC Treaty may be declared inapplicable if the agreement as a whole brings about overall economic advantages which outweigh the disadvantages for competition. Exemptions may be granted on a case-by-case basis or by regulation for certain category of agreements. Commission Regulation (EEC) No 123/85, which contained such a group exemption, expired on 30 June 1995 and has been replaced by Commission Regulation (EC) No 1475/95 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements¹. The Commission adopted this Regulation on 28 June 1995.

The Regulation contains several adjustments to stimulate competition in the car sector, to improve the functioning of a single market in cars and to re-balance the diverse interests in question. These adjustments aim in particular to:

- give dealers, the great majority of whom are small or medium sized enterprises, greater commercial independence vis-a-vis manufacturers;
- give independent spare-part manufacturers and distributors easier access to the various markets, notably the outlets provided by the car manufacturers' networks;
- improve the position of consumers in accordance with the principles underlying the internal market;
- make the dividing line between acceptable and unacceptable agreements and behaviour clearer.

As these changes are important for the distribution and servicing of vehicles, this brochure is intended as a legally non binding guide to the Regulation which is aimed particularly at distributors and consumers. It is not a detailed commentary on each provision of the Regulation. Its objective is to give answers to questions which are likely to arise in practice while applying the new regulatory framework for manufacturers, dealers, spare part producers and independent repairers. Moreover, it is intended to provide consumers with information as to how the Regulation guarantees the freedom to buy a car anywhere in the Community in accordance with the principles of the single market.

¹ OJ L 145, 29.6.1995, p.25

I. CLARIFICATION OF THE SCOPE OF EXEMPTION :

1. Scope of the Regulation

Article 1

Pursuant to Article 85 (3) of the Treaty it is hereby declared that subject to the conditions laid down in this Regulation Article 85 (1) shall not apply to agreements to which only two undertakings are party and in which one contracting party agrees to supply, within a defined territory of the common market

- only to the other party, or
- only to the other party and to a specified number of other undertakings within the distribution system,

for the purpose of resale, certain new motor vehicles intended for use on public roads and having three or more road wheels, together with spare parts therefor.

Question 1: Does the Regulation apply to the distribution and servicing of all kinds of motor vehicles? Does the Regulation apply to the separate distribution of vehicle spare parts ?

The Regulation applies to the distribution of motor vehicles which (1) are new and (2) intended for use on public roads and (3) have three or more road wheels [Article 1].

Used motor vehicles are not subject to the Regulation. The dividing line between new and used motor vehicles has to be drawn in accordance with commercial usage in a manner which prevents any circumvention of the Regulation.

Agricultural vehicles such as tractors are not subject to the Regulation, as their main use is not on public roads.

The Regulation does not apply to the distribution and servicing of motorbikes.

The separate distribution of automotive replacement parts without any connection to the distribution of vehicles is not covered either.

2. "BLACK LIST" CLAUSES AND PRACTICES

Article 6

1. The exemption shall not apply where:
 - (1) both parties to the agreement or their connected undertakings are motor vehicle manufacturers; or
 - (2) the parties link their agreement to stipulations concerning products or services other than those referred to in this Regulation or apply their agreement to such products or services; or
 - (3) in respect of motor vehicles having three or more road wheels, spare parts or services therefor, the parties agree restrictions of competition that are not expressly exempted by this Regulation; or
 - (4) in respect of motor vehicles having three or more road wheels or spare parts therefor, the parties make agreements or engage in concerted practices which are exempted from the prohibition in Article 85 (1) of the Treaty under Regulations (EEC) No 1983/83 or (EEC) No 1984/83 to an extent exceeding the scope of this Regulation; or
 - (5) the parties agree that the supplier reserves the right to conclude distribution and servicing agreements for contract goods with specified further undertakings operating within the contract territory, or to alter the contract territory; or
 - (6) the manufacturer, the supplier or another undertaking directly or indirectly restricts the dealer's freedom to determine prices and discounts in reselling contract goods or corresponding goods; or
 - (7) the manufacturer, the supplier or another undertaking within the network directly or indirectly restricts the freedom of final consumers, authorized intermediaries or dealers to obtain from an undertaking belonging to the network of their choice within the common market contract goods or corresponding goods or to obtain servicing for such goods, or the freedom of final consumers to resell the contract goods or corresponding goods, when the sale is not effected for commercial purposes; or
 - (8) the supplier, without any objective reason, grants dealers remunerations calculated on the basis of the place of destination of the motor vehicles resold or the place of residence of the purchaser; or
 - (9) the supplier directly or indirectly restricts the dealer's freedom under Article 3 (5) to obtain from a third undertaking of his choice spare parts which compete with contract goods and which match their quality; or
 - (10) the manufacturer directly or indirectly restricts the freedom of suppliers of spare-parts to supply such products to resellers of their choice, including those which are undertakings within the distribution system, provided that such parts match the quality of contract goods; or
 - (11) the manufacturer directly or indirectly restricts the freedom of spare-part manufacturers to place effectively and in an easily visible manner their trade mark or logo on parts supplied for the initial assembly or for the repair or maintenance of contract goods or corresponding goods; or
 - (12) the manufacturer refuses to make accessible, where appropriate upon payment, to repairers who are not undertakings within the distribution system, the technical information required for the repair or maintenance of the contractual or corresponding goods or for the implementing of environmental protection measures, provided that the information is not covered by an intellectual property right or does not constitute identified, substantial, secret know-how; in such case, the necessary technical information shall not be withheld improperly.

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| <p>2. Without prejudice to the consequences for the other provisions of the agreement, in the cases specified in paragraph 1 (1) to (5), the inapplicability of the exemption shall apply to all the clauses restrictive of competition contained in the agreement concerned; in the cases specified in paragraph 1 (6) to (12), it shall apply only to the clauses restrictive of competition agreed respectively on behalf of the manufacturer, the supplier or another undertaking within the network which is engaged in the practice complained of.</p> <p>3. Without prejudice to the consequences for the other provisions of the agreement, in the cases specified in paragraph 1 (6) to (12), the inapplicability of the exemption shall only apply to the clauses restrictive of competition agreed in favour of the manufacturer, the supplier or another undertaking within the network which appear in the distribution and servicing agreements concluded for a geographic area within the common market in which the objectionable practice distorts competition, and only for the duration of the practice complained of.</p> |
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Question 2: *Are there any clauses and/or practices which, under this Regulation, may not be included in exclusive and selective distribution agreements?*

- a) The Regulation includes in Article 6(1)(1) to (5) a list of *clauses* which should not be used in an agreement for the distribution of cars ("black clauses") and which render the Regulation inapplicable, namely leading to an automatic loss of the benefit of the group exemption, if incorporated into exclusive and selective distribution agreements.

The group exemption does not apply:

- if the two parties to an agreement are both motor vehicle manufacturers² [Article 6(1)(1)];
- if the obligations in the agreement are extended to products and services other than motor vehicles and spare parts [Article 6(1)(2)];
- if the agreement contains obligations in favour of the manufacturer or the dealer which are more far-reaching than permitted under the Regulation [Article 6(1)(3)];
- if the parties agree between themselves obligations which would be acceptable under Commission Regulation (EEC) No 1983/83³ concerning exclusive distribution agreements or under Commission Regulation (EEC) No 1984/83⁴ concerning exclusive purchasing agreements but which go further than is permitted by this Regulation [Article 6(1)(4)];
- If the manufacturer or supplier is given in the agreement the unilateral right to alter the contract territory during the period of the agreement, or to conclude distribution and service agreements with other companies in the contract territory [Article 6(1)(5)].

- b) Furthermore, the list contains "*black practices*" which also lead to the automatic loss of the exemption, if committed systematically or repeatedly [Article 6(1)(6) to (12), Recital 20].

² A reference to manufacturer includes, where appropriate, a reference to supplier

³ OJ L 173, 30.6.1983, p.1

⁴ OJ L 173, 30.6.1983, p.5

"Repeatedly" means that the practice must have been committed several times. An isolated practice is sufficient only where it is part of a plan, in which case it is considered to be committed "systematically".

"Black practices" are:

- where the manufacturer, the supplier or another undertaking within the network fixes the resale price for vehicles, spare parts or other contract goods and corresponding goods [Article 6(1)(6)];
- where the manufacturer, the supplier or another undertaking within the network directly or indirectly impedes final consumers, their intermediaries or authorized dealers from buying a vehicle where they consider it to be most advantageous [Article 6(1)(7)];
- where the manufacturer or the supplier, without objective reasons, makes the remuneration of a dealer dependent on the destination of sale [Article 6(1)(8)];
- where the manufacturer or the supplier directly or indirectly interferes with its dealer(s) buying spare parts of equal quality from a spare part supplier of his choice [Article 6(1)(9)];
- where the manufacturer or the supplier directly or indirectly interferes with sales by a spare-part supplier although the spare part supplier offers spare-parts of equal quality to those bought by the manufacturer [Article 6(1)(10)];
- where the manufacturer directly or indirectly hinders spare-part manufacturers from affixing their trade mark or logo on spare parts bought by the manufacturer or supplied to the network [Article 6(1)(11)];
- where the manufacturer does not pass on technical information necessary for the maintenance of its vehicles to independent repairers without objectively justified reasons for this refusal [Article 6(1)(12)].

The content of the "Black List" clauses and practices are further explained below in the context of the rights of dealers (chapter II), spare-part producers and resellers (chapter III) and consumers (chapter IV).

Question 3: What does the automatic loss of the benefit of the exemption mean for the distribution system?

The legal consequences differ depending on whether the inapplicability of the group exemption is due to the incorporation of "black clauses" in the exclusive and selective distribution agreement or whether this is due to a "black practice".

a) "Black clauses" [Article 6(1)(1) to (5)]:

If the parties agree to include a prohibited clause in their distribution agreement, the group exemption is inapplicable not only with regard to the prohibited clause(s) but with regard to all other restrictions of competition which are included in the agreement concerned. Therefore, the restrictive provisions in the distribution agreement, which would normally be allowed by Article 1 to 4 of the Regulation, are no longer exempted. It makes no difference whether such restrictions are in favour of the manufacturer or of the dealer.

As the Regulation does not then apply to exempt these restrictive clauses, they are prohibited by EC Competition Law (Article 85(1) of the Treaty) and are null and void from the date of the agreement. In addition, the Commission is entitled to fine the parties to the agreement [Article 15(2)(a) of Council Regulation No 17/62].

The parties may notify an exclusive and selective distribution agreement containing "black clauses" to receive individual exemption. Such individual exemption will only be justifiable in an exceptional situation relating to the specific circumstances of an individual case. A notification provides immunity from fines unless and until the Commission informs the undertakings concerned that after preliminary examination it considers that Article 85(1) of the Treaty applies and that application of Article 85(3) is not justified [Article 15(6) of Council Regulation No 17/62] and adopts a decision lifting immunity from fines.

The Regulation does not say whether the non-restrictive clauses in the exclusive and selective distribution agreement remain valid in such a situation. This is, in principle, a question of national law, and therefore for the competent national court to decide.

b) "Black practices" [Article 6(1) (6) to (12)]:

These are mostly actions on the part of a manufacturer, importer or authorized dealer, and have consequences only for the company engaged in the practice [Article 6(2)].

In cases of "black practices", all clauses in an exclusive and selective distribution agreement which are restrictive of competition and which benefit the company responsible are no longer covered by the group exemption. The consequences of the misconduct are limited to the contract territory where the distortion of competition takes place. However, if competition is distorted in a larger area, the exemption is no longer applicable for all the distribution contracts concluded for this area. The benefit of the exemption is only lost for so long as the objectionable conduct lasts.

This means, in practice, that if the manufacturer or importer is responsible, the authorized dealers are released from any obligation which has been imposed on them in favour of the manufacturer/ importer under the agreement.

Moreover, even where "black practices" are imposed, e.g. by the manufacturer, but accepted by the dealer because he complies with them, such behaviour is considered a concerted practice and prohibited (Article 85(1) of the Treaty). As in the case of the "black clauses" (see above), the Commission can fine the parties to the agreement [Article 15(2)(a) of Council Regulation No 17/62].

c) National courts in Member States which find "black clauses" and "black practices" which infringe EC competition law (Article 85(1) of the Treaty) can - as well as finding that the agreement or parts of it are prohibited and void - grant injunctions and award damages.

3. WITHDRAWAL OF THE BENEFIT OF THE EXEMPTION

Article 8

The Commission may withdraw the benefit of the application of this Regulation, pursuant to Article 7 of Regulation No 19/65/EEC, where it finds that in an individual case an agreement which falls within the scope of this Regulation nevertheless has effects which are incompatible with the provisions of Article 85 (3) of the Treaty, and in particular:

(1) where, in the common market or a substantial part thereof, contract goods or corresponding goods are not subject to competition from products considered by consumers as similar by reason of their characteristics, price and intended use;

(2) where prices or conditions of supply for contract goods or for corresponding goods are continually being applied which differ substantially as between Member States, such substantial differences being chiefly due to obligations exempted by this Regulation;

(3) where the manufacturer or an undertaking within the distribution system in supplying the distributors with contract goods or corresponding goods apply, unjustifiably, discriminatory prices or sales conditions.

Question 4: Are there any other circumstances in which an agreement may lose the benefit of the group exemption?

The Regulation lists in Article 8 examples of situations in which the Commission has the power to withdraw the benefit of the group exemption or to alter its scope in a particular case. In contrast to the effects of the Black List, in these cases the benefit of the exemption is not automatically lost but is subject to an official procedure by the Commission. The Commission may begin a procedure for withdrawal either upon complaint or on its own initiative.

Although the Commission may withdraw the benefit of the exemption for other reasons, the circumstances listed are those in which withdrawal is most likely. These are:

- where the contract goods are not subject to effective competition [Article 8(1)];
- where the distribution system leads over a considerable period to differentials in price and sales conditions between Member States [Article 8(2)];
- where the manufacturer or an undertaking within the distribution system applies, unjustifiably, discriminatory prices or sales conditions to its dealers [Article 8(3)].

The Commission has already published in connection with Regulation (EEC) No 123/85 a Notice⁵ which explains what are acceptable and unacceptable price differentials. This Commission Notice remains applicable under the new Regulation as well as the other Commission Notice concerning the clarification of the activities of motor vehicle intermediaries⁶.

⁵ OJ C 17, 18.1.1985, p.4

⁶ OJ C 329, 18.12.1991, p.20

4. DURATION OF THE REGULATION

Article 7

The prohibition laid down in Article 85 (1) of the Treaty shall not apply during the period from 1 October 1995 to 30 September 1996 to agreements already in force on 1 October 1995 which satisfy the conditions for exemption provided for in Commission Regulation (EEC) No 123/85.

Article 13

This Regulation shall enter into force on 1 July 1995.

It shall apply from 1 October 1995 until 30 September 2002.

The provisions of Regulation (EEC) No 123/85 shall continue to apply until 30 September 1995.

Question 5: From what date does Regulation (EC) No 1475/95 apply and when does it expire?

Regulation (EC) No 1475/95 entered into force on 1 July 1995. It says that until 30 September 1995, the provisions of Regulation (EEC) No 123/85 continue to apply [Article 13], in order to give the interested parties sufficient time to adapt their distribution systems to the changes brought about by the new Regulation.

A further transition period of one year is provided for exclusive and selective distribution agreements which are already in force on 1 October 1995 and which satisfy the conditions for exemption set by Regulation (EEC) No 123/85 [Article 7]. Therefore, from 1 October 1996 onwards, all exclusive and selective distribution agreements which are to benefit from the group exemption have to comply with Regulation (EC) No 1475/95.

Regulation (EC) No 1475/95 will be in force for 7 years and expires on 30 September 2002.

II. STRENGTHENING THE COMPETITIVENESS OF DEALERS:

1. MULTI-DEALERSHIPS

Article 3

The exemption shall also apply where the obligation referred to in Article 1 is combined with an obligation on the dealer:

.....

3. not to sell new motor vehicles offered by persons other than the manufacturer except on separate sales premises, under separate management, in the form of a distinct legal entity and in a manner which avoids confusion between makes;

4. not to permit a third party to benefit unduly, through any after -sales service performed in a common workshop, from investments made by a supplier, notably in equipment or the training of personnel;

.....

6. without the supplier's consent, neither to conclude distribution or servicing agreements with undertakings operating in the contract territory for contract goods or corresponding goods nor to alter or terminate such agreements;

Article 4

1. The exemption shall apply notwithstanding any obligation whereby the dealer undertakes to:

(1) comply, in distribution, sales and after -sales servicing with minimum standards, regarding in particular;

(a) the equipment of the business premises and the technical facilities for servicing;

(b) the specialized, technical training of staff;

(c) advertising;

(d) the collection, storage and delivery of contract goods or corresponding goods and sales and after -sales servicing;

(e) the repair and maintenance of contract goods and corresponding goods, particularly as regards the safe and reliable functioning of motor vehicles;

(2) order contract goods from the supplier only at certain times or within certain periods, provided that the interval between ordering dates does not exceed three months;

(3) endeavour to sell, within the contract territory and during a specified period, a minimum quantity of contract goods, determined by the parties by common agreement or, in the event of disagreement between the parties as to the minimum number of contractual goods to be sold annually, by an expert third party, account being taken in particular of sales previously achieved in the territory and of forecast sales for the territory and at national level;

(4) keep in stock such quantity of contract goods as may be determined in accordance with the procedure in (3);

(5) keep such demonstration vehicles within the contract range, or such number thereof, as may be determined in accordance with the procedure in (3);

(6) perform work under guarantee, free servicing and vehicle -recall work for contract goods and corresponding goods;

(7) use only spare parts within the contract range or corresponding spare parts for work under guarantee, free servicing and vehicle -recall work in respect of contract goods or corresponding goods;

(8) inform customers, in a general manner, of the extent to which spare parts from other sources might be used for the repair or maintenance of contract goods or corresponding goods;

(9) inform customers whenever spare parts from other sources have been used for the repair or maintenance of contract goods or corresponding goods

Article 5	
1.	In all cases, the exemption shall apply only if:
.....	
(2)	the supplier:
	(a) does not without objectively valid reasons withhold consent to conclude, alter or terminate sub -agreements referred to in Article 3 (6);
.....	
2.	Where the dealer has, in accordance with Article 4 (1), assumed obligations for the improvement of distribution and servicing structures, the exemption shall apply provided that:
(1)	the supplier releases the dealer from the obligations referred to in Article 3 (3) where the dealer shows that there are objective reasons for doing so;

Article 6	
1.	The exemption shall not apply where:
.....	
(2)	the parties link their agreement to stipulations concerning products or services other than those referred to in this Regulation or apply their agreement to such products or services; or
(3)	in respect of motor vehicles having three or more road wheels, spare parts or services therefor, the parties agree restrictions of competition that are not expressly exempted by this Regulation; or

Question 6: *Can a dealer sell more than one make of motor vehicle from the same sales premises?*

If a manufacturer wishes to benefit from the group exemption, its dealers must be given the right to sell competing makes.

The Regulation, however, allows the manufacturer to oblige the dealer to have (1) separate sales premises (2) under separate management (3) in the form of a distinct legal entity and (4) in a manner which avoids confusion between makes [see Article 3(3), Recital 7].

"Separate sales premises" may be located in the same building.

"Separate management" means in principle keeping separate records, accounts and sales forces.

The third condition, "in the form of a distinct legal entity", makes it clear that for each dealership a company has to be set up. It is the national law of the Member State in question which defines the requirements for the legal structure of such a company.

"In a manner which avoids confusion between makes" means, for example, that promotional literature on one make of vehicle should be kept separate from literature on the other. The attire of sales personnel should also respect this condition since the fixing of several manufacturers trademarks might cause confusion for consumers.

Question 7: Can the manufacturer always impose on the dealer the four obligations designed to maintain the separation of makes?

No, if the manufacturer has obliged the dealer to comply with minimum standards for the improvement of distribution and servicing structures (e.g. the collection, storage and delivery of contract goods or corresponding goods and sales and after sales servicing [described in Article 4(1)]), he must release the dealer from obligations relating to the separating of makes (see Question 6), provided that the dealer shows that there are objective reasons for so doing [Article 5(2)(1)].

It will depend on the facts of the case whether the manufacturer must release the dealer from all four obligations or only from those which have a detrimental effect on the dealer's business in that particular case.

An objective reason will be considered to exist if the obligations designed to maintain the separation of makes turn out to be excessive in a particular case [Recital 18]. One example of an objective reason is where the obligation(s) prevent the dealer from operating on an economically viable basis.

Question 8: Can a manufacturer discourage the development of 'multi-brand' dealerships?

The Regulation's main objective is to open markets in terms of geography, products and competitors. This is why the Regulation permits multimarketing dealerships in general and leaves it in the sole discretion of the dealer to decide whether he wants to sell a second make. The dealer's freedom to take an autonomous economic decision may not be restricted directly or indirectly by the manufacturer. Measures aimed at stipulating 'one brand' dealerships by a manufacturer, i.e. by way of rebate systems which accord higher rebates to the dealer if he maintains an exclusive dealership, would be considered as a restriction of competition that is not expressly exempted by the Regulation [Article 6(1)(3)], leading to an automatic loss of the benefit of the exemption.

Question 9: Is a dealer entitled to repair different makes in one workshop?

Yes. The manufacturer may not ask his dealers to instal separate workshops [Article 3(4)].

On the other hand, he may ask his dealers not to permit a third party to benefit unduly from the investments made by him, for example where the manufacturer has borne the costs of purchasing technical equipment used in the dealer's workshop. The manufacturer may require that this equipment may not be used to repair vehicles of another make. However, the financing of the equipment by the manufacturer may not be imposed.

The requirement may be more difficult to fulfil with regard to training of personnel. In this respect "unduly" means that a dealer has to make sure that knowledge obtained from the manufacturer which is not simply useful for repair work but which imparts additional qualifications in form of specific know-how to the personnel may not be used for other makes. This may lead in practice to the result that a dealer may have to nominate the personnel working for a specific make.

Question 10: Can a dealer participate in the distribution of competing makes through investment in other undertakings?

Dealers are free, even within the contract territory, to own or invest in companies which belong to the networks of competing manufacturers.

Question 11: Can a dealer appoint subagents?

Yes, but subject to the manufacturer's prior consent. The manufacturer can only refuse its consent if it gives objectively valid reasons which should be applied without discrimination, and in an equitable and reasonable manner [Article 3(6) and 5(1)(2(a))].

Question 12: Can a manufacturer oblige its dealers to cooperate with specific finance institutions or insurance companies?

The Regulation does not allow such a clause in the agreement. Bank or insurance services are not among the products and services dealt with in the Regulation. Under Article 6(1)(2), the exemption does not apply in such a case.

2. QUANTITATIVE PURCHASING TARGETS

Article 4	
1.	The exemption shall apply notwithstanding any obligation whereby the dealer undertakes to:
.....	
(3)	endeavour to sell, within the contract territory and during a specified period, a minimum quantity of contract goods, determined by the parties by common agreement or, in the event of disagreement between the parties as to the minimum number of contractual goods to be sold annually, by an expert third party, account being taken in particular of sales previously achieved in the territory and of forecast sales for the territory and at national level;
(4)	keep in stock such quantity of contract goods as may be determined in accordance with the procedure in (3);
(5)	keep such demonstration vehicles within the contract range, or such number thereof, as may be determined in accordance with the procedure in (3);

Article 3	
The exemption shall also apply where the obligation referred to in Article 1 is combined with an obligation on the dealer:	
.....	
10.	not to supply to a reseller:
(a)	contract goods or corresponding goods unless the reseller is an undertaking within the distribution system, or

Article 6	
1.	The exemption shall not apply where:
.....	
(3)	in respect of motor vehicles having three or more road wheels, spare parts or services therefor, the parties agree restrictions of competition that are not expressly exempted by this Regulation; or

Question 13: Can the dealer have sales targets and stock requirements imposed by the manufacturer?

Sales targets and stock requirements can only be set by agreement between the manufacturer and dealer. Neither party to the agreement is given the final say. In the event of disagreement between the parties on the annual agreement of these quantities, the matter must be referred to an expert third party [Article 4 (1) points 3, 4, and 5; Questions 17 to 19] or to a national court.

The Regulation starts with the assumption that the parties normally agree on an annual basis the minimum number of sales, stock and demonstration vehicles. Minimum requirements agreed for a shorter period may only be of an indicative nature. If they are made binding, this may result in an automatic loss of the benefit of the group exemption [Article 6(1)(3)]. This means that the dealer is free from the obligation to endeavour to sell the agreed minimum quantity of contract goods within that shorter period.

Question 14: Is there a general right for a dealer within the distribution network to obtain new motor vehicles in other parts of the Common Market?

An authorized dealer may not be prevented from selling to or purchasing from another authorized dealer within the Community. The Regulation only permits the manufacturer to impose on its dealers the obligation not to sell to a reseller who does not belong to its distribution system [Article 3(10)(a)]. The dealer may not be obliged to purchase only from the manufacturer. If the distribution agreement contains an obligation of the dealer to purchase only from the manufacturer, such obligation would be a "black clause" and the exemption would not apply [Article 6(1)(3)].

3. DURATION AND TERMINATION OF THE AGREEMENT

Article 5
..... 2. Where the dealer has, in accordance with Article 4 (1), assumed obligations for the improvement of distribution and servicing structures, the exemption shall apply provided that: (2) the agreement is for a period of at least five years or, if for an indefinite period, the period of notice for regular termination of the agreement is at least two years for both parties; this period is reduced to at least one year where: - the supplier is obliged by law or by special agreement to pay appropriate compensation on termination of the agreement, or - the dealer is a new entrant to the distribution system and the period of the agreement, or the period of notice for regular termination of the agreement, is the first agreed by that dealer; (3) each party undertakes to give the other at least six months' prior notice of intention not to renew an agreement concluded for a definite period. 3. The conditions for exemption laid down in (1) and (2) shall not affect; - the right of the supplier to terminate the agreement subject to at least one year's notice in a case where it is necessary to reorganize the whole or a substantial part of the network, - the right of one party to terminate the agreement for cause where the other party fails to perform one of its basic obligations. In each case, the parties must, in the event of disagreement, accept a system for the quick resolution of the dispute, such as recourse to an expert third party or an arbitrator, without prejudice to the parties' right to apply to a competent court in conformity with the provisions of national law.

Article 6
1. The exemption shall not apply where: (5) the parties agree that the supplier reserves the right to conclude distribution and servicing agreements for contract goods with specified further undertakings operating within the contract territory, or to alter the contract territory; or

Question 15: What is the minimum duration of the agreement and the period of notice for termination?

The parties may conclude an agreement for a definite period, or for an indefinite period [Article 5(2)].

If the parties choose the former, then they have to agree on a minimum duration of five years. There must also be a clause that in case one party does not want to renew the agreement, this party has to inform the other of its intention at least six months before the agreement is due to expire [Article 5(2)(3)]. If the parties conclude the agreement for an indefinite period, then they are deemed to agree on a two year period of notice for termination. Agreements can be terminated on one year's notice if the manufacturer undertakes to pay damages [Article 5(2)(2) first indent] or if the agreement is concluded with a newcomer to the network [Article 5(2)(2) second indent].

Question 16: Are there any possibilities for early termination of the agreement?

The Regulation introduces the possibility of early termination in two cases:

- a) The manufacturer has the right to terminate the agreement early (on one year's notice) where it needs to restructure the whole or a substantial part of the network. Whether it is necessary to reorganize is established between the parties by agreement or at the dealer's request by an expert third party or an arbitrator.

Recourse to an expert third party or an arbitrator does not affect the right of either party to apply to a national court under national law [Article 5(3)]. Where the supplier provides for himself in the contract unilateral rights of termination exceeding the limits set by the Regulation, he automatically loses the benefit of the group exemption [Article 6(1)(5); see above I.2.].

This possibility for early termination has been introduced to provide the manufacturer with an instrument for flexible adaptation to changes in distribution structures [Recital 19]. A need for reorganizing may arise due to the behaviour of competitors or due to other economic developments, irrespective of whether these are motivated by internal decisions of a manufacturer or external influences, e.g. the closure of a company employing a large workforce in a specific area. In view of the wide variety of situations which may arise, it would be unrealistic to list all the possible reasons.

Whether or not a "substantial part" of the network is affected, must be decided in the light of the specific organisation of a manufacturer's network in each case. "Substantial" implies both an economic and a geographical aspect, which may be limited to the network, or a part of it, in a given Member State. The manufacturer has to reach an agreement - either with or without the intermediation of an expert third party or arbitrator - with the dealer, whose distribution agreement will be terminated, but not with other dealers (who are only indirectly affected by an early termination).

- b) Both parties to the agreement have the right to terminate the agreement at any time without notice, where the other party fails to perform one of its basic obligations. Again, the parties must establish whether the reason for early termination is sufficient, by common accord or, in case of disagreement, by recourse to an expert third party or an arbitrator and/or by application to a competent court in conformity with the provisions of national law [Article 5(3)]. One reason for early termination might be where a party infringes contractual obligations allowed under Articles 1 to 4 of the Regulation.

4. RECOURSE TO EXPERT THIRD PARTY OR ARBITRATOR

Article 4	
1.	The exemption shall apply notwithstanding any obligation whereby the dealer undertakes to:
.....	
(3)	endeavour to sell, within the contract territory and during a specified period, a minimum quantity of contract goods, determined by the parties by common agreement or, in the event of disagreement between the parties as to the minimum number of contractual goods to be sold annually, by an expert third party, account being taken in particular of sales previously achieved in the territory and of forecast sales for the territory and at national level;
(4)	keep in stock such quantity of contract goods as may be determined in accordance with the procedure in (3);
(5)	keep such demonstration vehicles within the contract range, or such number thereof, as may be determined in accordance with the procedure in (3);

Article 5

.....

3. The conditions for exemption laid down in (1) and (2) shall not affect;

- the right of the supplier to terminate the agreement subject to at least one year's notice in a case where it is necessary to reorganize the whole or a substantial part of the network,
- the right of one party to terminate the agreement for cause where the other party fails to perform one of its basic obligations.

In each case, the parties must, in the event of disagreement, accept a system for the quick resolution of the dispute, such as recourse to an expert third party or an arbitrator, without prejudice to the parties' right to apply to a competent court in conformity with the provisions of national law.

Question 17: In what circumstances does the Regulation call upon the manufacturer and dealer, in the event of disagreement between them, to refer to an expert third party or an arbitrator?

The Regulation says that the manufacturer and dealer should refer to an expert third party when they disagree with regard to the annual setting of (1) sales targets [Article 4(1)(3)]; (2) stock requirements [Article 4(1)(4)] and (3) the keeping of demonstration vehicles [Article 4(1)(5)].

Recourse to an expert third party or an arbitrator is provided for in the case of early termination of the agreement. The Regulation leaves the parties free to decide whether they wish to refer to an expert third party or to an arbitrator [Article 5(3)].

However, the parties are not restricted to the use of an expert third party or an arbitrator only in these cases. They can adopt such procedures in other cases of dispute if they both agree so to do.

Question 18: How will the right to apply to a competent court interact with recourse to an expert third party or arbitrator?

The Regulation says that to resolve disputes, to establish a quick and efficient system of settlement, the parties must first go to an expert or an arbitrator. However, this obligation is without prejudice to the parties' right to apply to a competent national court to the extent this is allowed under national law.

Question 19: Who can act as an expert third party or an arbitrator and how should an expert third party or arbitrator be nominated?

Any person, accepted by both parties as being qualified to act in such a capacity, may be appointed as expert third party or arbitrator.

The parties are free to decide, should the situation arise, whom they wish to nominate and whether they prefer to appoint one, two, three or more people to be the expert(s) or arbitrator(s). However, no party is allowed to decide unilaterally who will be the expert or arbitrator. In the event of disagreement the parties shall adopt the nomination procedures which are normally used in such cases, e.g nomination by the president of the court of first instance, by the president of the chambers for commerce and industry. It seems advisable that the contract between the manufacturer and dealer should specify what kind of nomination procedure they wish to use should the situation arise.

5. DIRECT SALES

Article 2

The exemption shall also apply where the obligation referred to in Article 1 is combined with an obligation on the supplier neither to sell contract goods to final consumers nor to provide them with servicing for contract goods in the contract territory.

Question 20: May the manufacturer reserve the right to make direct sales to final consumers?

Article 2 of the Regulation exempts an obligation on the manufacturer neither to sell contract goods to final consumers nor to provide them with servicing for contract goods in the contract territory. It follows from this provision that in the absence of such a contractual obligation, the manufacturer is free to supply final consumers in the contract territory. On the other hand, it is clear that customer restrictions may not be imposed on the dealer and that they lead to the automatic loss of the benefit of the group exemption. Therefore, the manufacturer may not prevent the dealer from supplying those final consumers whom the manufacturer himself wishes to supply.

Moreover, the manufacturer should take care not to affect by such behaviour the economic viability of the dealer's business because, in such a case, the basis of the agreement itself may be destroyed. It is for a national court to solve any dispute.

III. IMPROVED MARKET ACCESS FOR SPARE PART PRODUCERS / DISTRIBUTORS AND FOR INDEPENDENT REPAIRERS :

1. SPARE PARTS

Article 3

The exemption shall also apply where the obligation referred to in Article 1 is combined with an obligation on the dealer:

.....

5. neither to sell spare parts which compete with contract goods without matching them in quality nor to use them for repair or maintenance of contract goods or corresponding goods;

.....

10. not to supply to a reseller:

- (a) contract goods or corresponding goods unless the reseller is an undertaking within the distribution system, or
- (b) spare parts within the contract range unless the reseller uses them for the repair or maintenance of a motor vehicle;

Article 4

1. The exemption shall apply notwithstanding any obligation whereby the dealer undertakes to:

.....

(7) use only spare parts within the contract range or corresponding spare parts for work under guarantee, free servicing and vehicle -recall work in respect of contract goods or corresponding goods;

(8) inform customers, in a general manner, of the extent to which spare parts from other sources might be used for the repair or maintenance of contract goods or corresponding goods;

(9) inform customers whenever spare parts from other sources have been used for the repair or maintenance of contract goods or corresponding goods.

Article 5

1. In all cases, the exemption shall apply only if:

.....

(2) the supplier:

- (c) distinguishes, in any scheme for aggregating quantities or values of goods obtained by the dealer from the supplier and from connected undertakings within a specified period for the purpose of calculating discounts, at least between supplies of
 - motor vehicles within the contract range,
 - spare parts within the contract range, for supplies of which the dealer is dependent on undertakings within the distribution network, and
 - other goods;

Article 6	
1.	The exemption shall not apply where:
.....	
(2)	the parties link their agreement to stipulations concerning products or services other than those referred to in this Regulation or apply their agreement to such products or services; or
.....	
(9)	the supplier directly or indirectly restricts the dealer's freedom under Article 3 (5) to obtain from a third undertaking of his choice spare parts which compete with contract goods and which match their quality; or
(10)	the manufacturer directly or indirectly restricts the freedom of suppliers of spare-parts to supply such products to resellers of their choice, including those which are undertakings within the distribution system, provided that such parts match the quality of contract goods; or
(11)	the manufacturer directly or indirectly restricts the freedom of spare -part manufacturers to place effectively and in an easily visible manner their trade mark or logo on parts supplied for the initial assembly or for the repair or maintenance of contract goods or corresponding goods; or

Article 10	
For the purposes of this Regulation the following terms shall have the following meanings:	
.....	
4.	'contract goods' are new motor vehicles intended for use on public roads and having three or more road wheels, and spare parts therefor, which are the subject of an agreement within the meaning of Article 1;
5.	the 'contract range' refers to the totality of the contract goods;
6.	'spare parts' are parts which are to be installed in or upon a motor vehicle so as to replace components of that vehicle. They are to be distinguished from other parts and accessories, according to trade usage;
.....	
11.	'corresponding goods', 'corresponding motor vehicles' and 'corresponding parts' are those which are similar in kind to those in the contract range, are distributed by the manufacturer or with the manufacturer's consent, and are the subject of a distribution or servicing agreement with an undertaking within the distribution system;

Question 21: *Do all vehicle parts and accessories fall under the term "spare parts" as used in the Regulation?*

No, only parts which are to be installed in or upon a motor vehicle so as to replace components of that vehicle are spare parts within the meaning of the Regulation. The distinction follows trade usage [Article 10(6)]. For example: oil and other liquids are not considered as "spare parts" under the Regulation. Consequently, dealers are free to get those products wherever they wish and the manufacturer cannot justify restrictions imposed on its dealers with regard to the sourcing of such parts and accessories through reference to the Regulation. Nor is it possible for the parties to include parts and accessories, which fall outside the definition of "spare part", within the scope of the Regulation by agreement. If they do so, they will automatically lose the benefit of the group exemption [Article 6(1)(2)].

Question 22: *What control can be exercised by a manufacturer over the sourcing of spare parts for use in the normal repair and maintenance of contract vehicles?*

So as to ensure effective competition on the maintenance and repair markets, the Regulation starts from the assumption that dealers must be free to out-source spare parts, as this is in the interest of consumers. Nevertheless, the Regulation enables the manufacturer to verify the quality of spare parts, as this is important with regard to safety and consumer satisfaction.

This is why the manufacturer may impose on its dealers the obligation neither to sell spare parts which compete with contract goods without matching them in quality nor to use parts of lower quality for repair or maintenance of contract goods or corresponding goods [Article 3(5)]. This means that dealers are free to out-source spare parts (1) if the parts do not compete with those promoted by the manufacturer or (2) if the parts compete with contract goods but they match the quality of those products.

However, the manufacturer can require its dealers to inform customers about the use of spare parts from other sources in repair and maintenance work, first in a general manner before repair work has been undertaken [Article 4(1)(8)] and second, after the completion of the repair work where out-sourced spare parts have been used, as to their specific use [Article 4(1)(9)].

Question 23: What is meant by "matching" the quality of the spare parts sourced by the manufacturer? How will the matching quality of spare parts furnished by independent suppliers be controlled?

Recital (8) of the Regulation says that it can be presumed that all parts coming from the same source of production, regardless of whether supplied to the car manufacturer or to a dealer belonging to the network, are identical in characteristics and origin. If the dealer wishes to be certain that the parts offered to him correspond to those supplied to the manufacturer of the vehicle, he should ask the spare parts supplier for confirmation.

Where such parts have not been supplied to the car manufacturer, the question of equivalence in quality must be solved according to the general rules of national law.

Question 24: Do the same rules apply to the use of spare parts in guarantee work?

No, the manufacturer may oblige its dealers to use only its spare parts (i.e. those within the contract range or corresponding spare parts) for work under guarantee, free servicing and vehicle recall-work [Article 4(1)(7)].

Spare parts within the contract range or corresponding spare parts are either sourced and distributed by the manufacturer to its dealers [Article 10(4) and (5)] or sold by another undertaking to the authorized dealers with the manufacturer's consent. In the latter case, such spare parts must additionally be the subject of a distribution or servicing agreement between an authorized dealer and the manufacturer or between the manufacturer and a spare-part supplier [Article 10(11)].

Question 25: Why must a manufacturer, in aggregating quantities or values of goods for the purpose of calculating discounts to be granted to a dealer, differentiate between discounts given for motor vehicles within the contract range and for spare parts and for other goods?

The purpose is to avoid dealers having to rely solely on the manufacturer's supply because of special discounts given by him, thus closing the distribution system to independent spare-part suppliers [Article 5(1)(2)(c)].

Therefore, the Regulation imposes the obligation on the manufacturer to differentiate between discounts given to the dealer (1) for the ordering of motor vehicles, (2) for the ordering of spare parts for supplies of which the dealer is dependent on undertakings within the distribution network, e.g. bodywork spare-parts and (3) other spare-parts which are used for the normal maintenance of a vehicle and which are equally available outside the distribution network. If these three "baskets" are not kept separate for the accounting of discounts, it could lead to the result that a dealer receives such a high discount from the manufacturer because of the high amount of goods purchased, that no other spare-part manufacturer or supplier could make a competitive price.

Question 26: What are the legal consequences if a manufacturer tries to hinder dealers from purchasing spare parts from competing producers which are of matching quality?

The manufacturer loses the benefit of the exemption, if, directly or indirectly, he restricts the freedom of authorized distributors to purchase from third parties spare parts which match the quality of the contract products [Article 6(1)(9)].

Question 27: What rights are protected by the Regulation on independent suppliers of spare parts and on resellers?

The Regulation opens the market for independent suppliers of spare parts (described above) and resellers. The supply of contract goods [Article 10(4)] to resellers may not be prohibited where they belong to the same distribution system [Article 3(10)(a)], or where the purchase of spare parts is for their own use in effecting repairs or maintenance [Article 3(10)(b)].

These rights of suppliers of spare parts and resellers are safeguarded by the Black List. The manufacturer will automatically lose the benefit of the group exemption, if he directly or indirectly restricts:

- the freedom of spare-part suppliers to supply such products of matching quality to resellers of their choice, including those which are undertakings within the distribution system [Article 6(1)(10)];
- the spare-part manufacturers are hindered from affixing effectively and in an easily visible manner their trade mark or logo on the spare parts bought by the manufacturer or supplied to the network [Article 6(1)(11)].

2. TECHNICAL INFORMATION

Article 6	
1.	The exemption shall not apply where:
.....	
(12)	the manufacturer refuses to make accessible, where appropriate upon payment, to repairers who are not undertakings within the distribution system, the technical information required for the repair or maintenance of the contractual or corresponding goods or for the implementing of environmental protection measures, provided that the information is not covered by an intellectual property right or does not constitute identified, substantial, secret know-how; in such case, the necessary technical information shall not be withheld improperly.

Question 28: To what degree is the manufacturer obliged under the Regulation to provide access for independent repairers to technical information required for the repair or maintenance of vehicles produced by the manufacturer?

Independent garage owners are often unable to provide repair services because the manufacturer makes the relevant technical knowledge available only to firms which are network members. The consumer is thus deprived of a considerable part of his freedom of choice for the maintenance and repair of his car.

The Regulation takes account of this problem by imposing the obligation on manufacturers to make accessible to non-network firms the technical information necessary for the repair and maintenance of their makes of motor vehicles, provided this information is not covered by the manufacturer's intellectual property rights or does not constitute identified, substantial and secret know-how. Even in such cases, the necessary technical information may not be withheld in a discriminatory or abusive manner [Article 6(1)(12), Recital 28].

However, the manufacturer may ask from the independent repairer payment for the supply of technical information. In such a case, the amount requested should be reasonable and neither discriminatory nor prohibitive.

The term "intellectual property right" includes rights such as patents, copyrights, registered designs and industrial and commercial property.

The wording "identified, substantial, secret know-how" is interpreted according to the definition given in Article 1(7)(1) to (4) of Regulation (EEC) No 556/89⁷ as amended by Commission Regulation (EEC) No 151/93⁸.

IV. INCREASING CONSUMERS' CHOICE IN ACCORDANCE WITH THE PRINCIPLES OF THE SINGLE MARKET:

1. PARALLEL IMPORTS

Article 3	
The exemption shall also apply where the obligation referred to in Article 1 is combined with an obligation on the dealer:	
.....	
10.	not to supply to a reseller:
	(a) contract goods or corresponding goods unless the reseller is an undertaking within the distribution system, or
	(b) spare parts within the contract range unless the reseller uses them for the repair or maintenance of a motor vehicle;
11.	not to sell motor vehicles within the contract range or corresponding goods to final consumers using the services of an intermediary unless that intermediary has prior written authority from such consumers to purchase a specified motor vehicle or where it is taken away by him, to collect it.

⁷ OJ L 61, 4.3.1989, p.1.

⁸ OJ L 21, 29.1.1993, p.8.

Article 5

1. In all cases, the exemption shall apply only if:
- (1) the dealer undertakes:
- (a) in respect of motor vehicles within the contract range or corresponding thereto which have been supplied in the common market by another undertaking within the distribution network:
 - to honour guarantees and to perform free servicing and vehicle -recall work to an extent which corresponds to the dealer's obligation covered by Article 4 (1) (6),
 - to carry out repair and maintenance work in accordance with Article 4 (1) (1) (e);
 - (b) to impose upon the undertakings operating within the contract territory with which the dealer has concluded distribution and servicing agreements as provided for in Article 3 (6) an obligation to honour guarantees and to perform free servicing and vehicle recall work at least to the extent to which the dealer himself is so obliged:

Article 6

1. The exemption shall not apply where:
-
- (6) the manufacturer, the supplier or another undertaking directly or indirectly restricts the dealer's freedom to determine prices and discounts in reselling contract goods or corresponding goods; or
 - (7) the manufacturer, the supplier or another undertaking within the network directly or indirectly restricts the freedom of final consumers, authorized intermediaries or dealers to obtain from an undertaking belonging to the network of their choice within the common market contract goods or corresponding goods or to obtain servicing for such goods, or the freedom of final consumers to resell the contract goods or corresponding goods, when the sale is not effected for commercial purposes; or
 - (8) the supplier, without any objective reason, grants dealers remunerations calculated on the basis of the place of destination of the motor vehicles resold or the place of residence of the purchaser; or

Article 10

- For the purposes of this Regulation the following terms shall have the following meanings:
-
12. 'resale' includes all transactions by which a physical or legal person - 'the reseller' - disposes of a motor vehicle which is still in a new condition and which he had previously acquired in his own name and on his own behalf, irrespective of the legal description applied under civil law or the format of the transaction which effects such resale. The terms resale shall include all leasing contracts which provide for a transfer of ownership or an option to purchase prior to the expiry of the contract;

Question 29: Is a consumer, who is a resident of a EU Member State, free to buy a vehicle wherever he considers it to be most advantageous within the Common Market?

The consumer's freedom to buy anywhere in the Common Market is one of the fundamental achievements of the European Community and the Regulation reinforces this right. The consumer's right is not accompanied by an obligation imposed on dealers to sell since it is normally in a dealer's interest to maximise sales. A dealer within the Common Market may not reject a consumer's offer to buy or ask for a higher price simply because the consumer is a resident of another EU Member State.

The Regulation reinforces the right of a consumer resident in one Member State to buy a motor vehicle in another Member State:

- The consumer can be requested to complete only the same documentation and in the usual manner as is normally and lawfully required of a consumer resident in the Member State where the vehicle is bought. Usually such documentation relates to the name and address of the consumer.
- Under the Regulation the producer and all dealers should honour the guarantee and provide free servicing, vehicle recall work, and repair and maintenance services necessary for the safe and reliable functioning of the vehicle, irrespective of where and from whom in the Common Market the vehicle was purchased [Article 5(1)(1)(a) and (b) and Recital 26].
- The manufacturer, the supplier or another undertaking within the network who directly or indirectly restricts the freedom of final consumers, authorized intermediaries or authorized dealers to obtain a new motor vehicle from whichever authorized dealer they choose within the Common Market automatically loses the benefit of the exemption [Article 6(1)(7)].

Question 30: What formalities apply if a consumer appoints an intermediary to purchase a motor vehicle in another Member State on the consumer's behalf?

The intermediary must have prior authorization in writing from the consumer to purchase and / or to collect a specified vehicle [Article 3(11)]. The Commission has already published under Regulation (EEC) No 123/85 a Commission Notice ⁹, which remains applicable.

The written authorization must enable the dealer to identify the final consumer by name and address. The dealer may require such authorization to include the name and address of the intermediary. Moreover, the authorization has to specify the vehicle together with the essential details chosen by the consumer, such as make and model together with the signature of the consumer and the date of signing.

If an intermediary cannot show such authorization the manufacturer may oblige his dealer(s) not to sell to him [Article 3(10)].

Question 31: Does the use of an intermediary alter the rights accorded to the consumer under the Regulation with regard to purchase or after-sales service?

The right of an authorized intermediary to purchase a motor vehicle on behalf of the final consumer in a Member State other than where the final consumer is resident is given the same protection as the consumer's right to conclude personally such a transaction [see Article 6(1)(7)].

⁹ OJ C 329, 18.12.1991, p.20

Question 32: Can a manufacturer stipulate the resale price charged by or discounts given by a dealer to a consumer?

Although it is true that a manufacturer may recommend prices, he may neither directly nor indirectly impose on the dealer fixed prices. Neither minimum and maximum resale prices may be fixed by the manufacturer. It is up to the dealer to decide his own policy on resale prices and discounts. If the manufacturer restricts the dealer's freedom with regard to resale prices and discounts, such behaviour will lead to the automatic loss of the exemption for the manufacturer [Article 6(1)(6)].

Question 33: Is the consumer restricted in disposing of the car?

The consumer is free to sell the motor vehicle at any time provided he is not a disguised independent reseller [Article 6(1)(7), Article 10(12)]. The manufacturer, importer or another undertaking within the distribution network may not impose an obligation on the final consumer to sell the vehicle only after a certain period of time and/ or after a certain mileage reading.

Question 34: In what way(s) does the Regulation prevent a manufacturer from interfering with parallel imports / exports?

The scope of the rights of consumers, intermediaries and dealers to conduct parallel imports / exports has been discussed above. The manufacturer is, therefore, unable to interfere with these rights without losing the benefit of the exemption.

Additionally, a manufacturer cannot base the payment to a dealer (including rebate systems) on the destination of the vehicle being sold, without having objective reasons [Article 6(1)(8), Recital 26]. "Objective reasons" should be applied without discrimination, and in an equitable and reasonable manner. The manufacturer is, for example, not allowed to give greater remuneration to the dealer for sales to customers resident within the contract territory without objective reason. This prohibition therefore avoids indirect pressure being imposed on the dealer to sell only within the contract territory. An objective reason would be if the legal situation changes in a given Member State, e.g. tax which has led to a change in the calculation basis of list prices.

2. HONOURING OF MANUFACTURER'S GUARANTEE

Article 4
1. The exemption shall apply notwithstanding any obligation whereby the dealer undertakes to: (1) comply, in distribution, sales and after -sales servicing with minimum standards, regarding in particular; (e) the repair and maintenance of contract goods and corresponding goods, particularly as regards the safe and reliable functioning of motor vehicles;

Article 5
<p>1. In all cases, the exemption shall apply only if:</p> <p>(1) the dealer undertakes:</p> <p>(a) in respect of motor vehicles within the contract range or corresponding thereto which have been supplied in the common market by another undertaking within the distribution network:</p> <ul style="list-style-type: none"> - to honour guarantees and to perform free servicing and vehicle -recall work to an extent which corresponds to the dealer's obligation covered by Article 4 (1) (6), - to carry out repair and maintenance work in accordance with Article 4 (1) (1) (e);.....

Article 6
<p>1. The exemption shall not apply where:</p> <p>.....</p> <p>(7) the manufacturer, the supplier or another undertaking within the network directly or indirectly restricts the freedom of final consumers, authorized intermediaries or dealers to obtain from an undertaking belonging to the network of their choice within the common market contract goods or corresponding goods or to obtain servicing for such goods, or the freedom of final consumers to resell the contract goods or corresponding goods, when the sale is not effected for commercial purposes; or</p>

Question 35: *Having purchased the motor vehicle in another Member State, where can the consumer have normal servicing or guarantee work carried out?*

The consumer is entitled to seek to have such a vehicle serviced by any undertaking belonging to the network which distributed the vehicle. Hence it is unnecessary for the consumer to return to the dealer in the Member State of purchase [Article 5(1)(1)(a) and Article 4(1)(1)(e)]. The consumer can also turn for servicing to an independent repairer even though there is a risk that in this case the manufacturer can refuse to honour guarantee services thereafter.

Under the Regulation, authorized dealers are expressly obliged to honour the manufacturer's guarantee, to perform free servicing and vehicle recall work on vehicles within their contract or a corresponding range which were supplied in the Common Market by another undertaking within the same distribution network, but only to the extent to which the dealers are obliged under the terms of their distributorship to service vehicles which they themselves have supplied [Article 5 (1)(1)(a), Recital 12]. This provision ensures that a final consumer can have the benefit of the manufacturer's guarantee, free servicing and vehicle recall work available from every dealer of the manufacturer's network throughout the Community.

The guarantee period begins at the time when a car leaves the manufacturer's network, i.e the delivery of a car by an authorized dealer. It makes no difference whether the consumer himself or an authorized intermediary collects the vehicle from the authorized dealer. A final consumer who purchases a car from an independent reseller, should be aware that a part of the guarantee period given by the manufacturer could already have expired as the reseller could have bought the car from an authorized dealer of the manufacturer's network some months previously.

Where a manufacturer, importer, dealer or another company within the network impedes the principle of Community-wide guarantee services, it will lose the benefit of the exemption [Article 6(1)(7)].

3. ADVERTISING OUTSIDE THE CONTRACT TERRITORY

Article 3

The exemption shall also apply where the obligation referred to in Article 1 is combined with an obligation on the dealer:

.....

8. outside the contract territory:

.....

(b) not to solicit customers for contract goods or corresponding goods , by personalized advertising;

Question 36: To what extent is a dealer free to advertise outside the contract territory?

As the Regulation aims at reinforcing flexible demand for contract goods, customers must be in a position to choose the offer which suits them best. The Regulation, therefore, provides that the dealer must be free to seek customers outside his territory by means e.g. of media, posters, general brochures or advertisements in newspapers [Article 3(8)(b)]. The manufacturer can only oblige his dealer not to seek customers by personalized advertising, i.e. telephone or other form of telecommunication, doorstep canvassing or by direct mail.

4. LEASING

Article 3

The exemption shall also apply where the obligation referred to in Article 1 is combined with an obligation on the dealer:

.....

10. not to supply to a reseller:

(a) contract goods or corresponding goods unless the reseller is an undertaking within the distribution system, or

(b) spare parts within the contract range unless the reseller uses them for the repair or maintenance of a motor vehicle;

Article 10

For the purposes of this Regulation the following terms shall have the following meanings:

.....

12. 'resale' includes all transactions by which a physical or legal person - 'the reseller' - disposes of a motor vehicle which is still in a new condition and which he had previously acquired in his own name and on his own behalf, irrespective of the legal description applied under civil law or the format of the transaction which effects such resale. The terms resale shall include all leasing contracts which provide for a transfer of ownership or an option to purchase prior to the expiry of the contract;

13. 'distribute' and 'sell' include other forms of supply by the dealer such as leasing.

Question 37: What is the position if a consumer wishes to lease a vehicle from a dealer?

The Regulation makes it clear that a dealer can lease cars as well as selling them [Article 10(13)]. This ensures that any dealer who offers leasing contracts to customers may still benefit from exemption under the Regulation and will still be required to comply with obligations imposed under the Regulation for the protection of consumers, for example as to the servicing of vehicles.

Question 38: Is a dealer entitled to sell to leasing companies?

Yes, the supply to leasing companies is a legitimate part of the activities of dealers as leasing companies are normally considered to be final consumers. However, the supplier may prevent the dealer from supplying contract goods to leasing companies which in fact act as resellers and which do not belong to the distribution network [Article 3(10)]. Article 10(12) makes it clear that leasing contracts which involve a transfer of ownership or a purchase option prior to the expiry of the contract are in reality sales contracts, and that the leasing company in such cases is treated as a reseller.

V. INTERACTION WITH OTHER PROVISIONS OF COMMUNITY LAW

Article 12

Regulation (EEC) No 4087/88 is not applicable to agreements concerning the products or services referred to in this Regulation.

Article 6

1. The exemption shall not apply where:
.....
(4) in respect of motor vehicles having three or more road wheels or spare parts therefor, the parties make agreements or engage in concerted practices which are exempted from the prohibition in Article 85 (1) of the Treaty under Regulations (EEC) No 1983/83 or (EEC) No 1984/83 to an extent exceeding the scope of this Regulation; or

Question 39: What effect does the Regulation have on the other group exemption Regulations which relate to the distribution of goods or services?

The Regulation excludes the application of Commission Regulation (EEC) No 4087/88 concerning franchising agreements¹⁰ on agreements concerning the distribution and servicing of new motor vehicles and the spare parts therefor [Article 12]. The reason is that Regulation 1475/95 has been specifically written for car distribution and is intended to safeguard and balance all the interests involved. Producers can seek an individual exemption if they wish to organize their distribution network as a franchise system.

The other group exemption regulations concerning the distribution of goods, Commission Regulation (EEC) No 1983/83¹¹ and (EEC) No 1984/83¹², remain applicable to cars. This means that producers are free to choose to organize their distribution system according to Regulation 1475/95 or according to these two other group exemptions. It is, however, not possible to combine provisions of those Regulations with provisions of Regulation 1475/85 if the other Regulations allow the introduction of obligations which favour the manufacturer or the dealer and which are more far-reaching than those permitted under Regulation 1475/95 [Article 6(1)(4)].

The group exemption regulations concerning specialization¹³ and research and development agreements¹⁴ are applicable without any restriction since their emphasis does not lay on the distribution of goods.

¹⁰ OJ L 359, 28.12.1988, p.46

¹¹ OJ L 173, 30.6.1983, p.1

¹² OJ L 173, 30.6.1983, p.5

¹³ Commission Regulation (EEC) No 417/85, OJ L 53, 22.2.1985, p.1

¹⁴ Commission Regulation (EEC) No 418/85, OJ L 53, 22.2.1985, p.5

Question 40: Can Article 86 of the Treaty apply to an exclusive and selective distribution agreement which falls within the scope of Regulation 1475/95 ?

Yes, the application of Regulation 1475/95 - as with any other group exemption regulation - does not preclude the application of Article 86 of the Treaty. The scope of application of Article 86 of the Treaty is different from that of Article 85 since Article 86 requires that the undertaking in question has a dominant position in the relevant market. Article 85 of the Treaty - under which a group exemption is granted - prohibits agreements and concerted practices which restrict competition within the Common Market.

Annex: Commission Regulation (EC) No 1475/95 of 28 June 1995 on the application of Article 85(3) of the Treaty to certain categories of motor vehicle distribution and servicing agreements