

FIGIEFA

FEDERATION INTERNATIONALE DES GROSSISTES, IMPORTATEURS & EXPORTATEURS EN FOURNITURES AUTOMOBILES
INTERNATIONAL FEDERATION OF AUTOMOTIVE AFTERMARKET DISTRIBUTORS

The new Automotive Block Exemption Regulation 1400/2002/EC

**Opportunities for
Independent Automotive
Parts Distributors & Other
Independent Aftermarket
Operators**

Opportunity Checklist

- ✓ Promote actively the terms 'original spare parts' and 'matching quality parts' as a quality label in the independent automotive aftermarket.

- ✓ Promote competitive spare parts to authorised repairers and vehicle dealers – they have the broad right to use matching quality spare parts supplied by independent parts distributors as an alternative supply channel.

- ✓ OE-suppliers should brand their original equipment with their own logos, so that the consumer can be made aware of the real origin of a component.

- ✓ Promote your maintenance and repair services "from day one" for new vehicles – independent repairers have the right to carry out maintenance services and repair jobs during the warranty period of a vehicle.

- ✓ Use the extended right of access to technical information. Independent repairers must receive the same technical information required for maintenance, service and repair as authorised repairers. For independent parts distributors, this is a supplementary opportunity to develop and to promote technical information services to their customers.

- ✓ If you are an independent parts distributors, you may wish to contact vehicle makers (VMs) and ask them for the standards and conditions to become a VM's authorised parts dealer, if such an authorised distribution contract fits into your strategy.



The new Block Exemption Regulation

Opportunities for the independent aftermarket

The new Automotive Block Exemption Regulation (BER) 1400/2002/EC, which entered into force on 1st October 2002, is the new legislative framework for motor vehicle distribution and servicing agreements. Also containing important provisions for the automotive aftermarket, the new BER aims at creating more competition in the sales and servicing markets as well as in the markets for the supply of spare parts. The European Commission thereby intends to preserve the motorists' right to have their vehicles serviced, maintained and repaired at a workshop of their choice and at prices controlled by competition.

This leaflet explains the rights and opportunities that the new BER grants to or opens up for independent aftermarket operators.



The new BER is a legal framework, which offers all market participants greater liberties and a larger scope to increase competition. The EU Commission is expecting the independent aftermarket to make use of the new system. This will of course be a continuous process, during which FIGIEFA, together with your national association, will remain at your disposal.

Spare parts

Definitions

One of the most far reaching innovations for the independent aftermarket is the new definition of “original spare parts”. The new definition encompasses:

- Spare parts produced “in-house” by vehicle manufacturers themselves;
- Spare parts, manufactured by independent spare parts producers, which are supplied via the vehicle manufacturer and his authorised partners. The vehicle manufacturer may require – as is often done in daily business – the use of his logo on the parts distributed via his channel; the spare parts producer, however, may not be hindered from using his own trademark (either exclusively or in parallel as “double branding”);
- Spare parts, manufactured by spare parts producers (whether or not they are OE suppliers), which are technically identical to the component parts that were used in the new vehicle, and which are supplied to the independent aftermarket. These parts, of course, bear only the trademark of the spare parts producer.



The term “**original spare parts**” is thus no longer defined with regard to the vehicle manufacturer’s distribution system, but instead in consideration of the quality of the components. Parts that are identical in technical terms can now be offered and procured as ‘original spare parts’. The new definition breaks through the terminology monopoly of vehicle manufacturers and opens up new marketing opportunities for the independent aftermarket.



The new BER also defines “**spare parts of matching quality**”: The definition provides that this spare part must match the quality of the components which are or were used for the new vehicle, i.e. it must at least correspond to the original part in terms of its construction, production and functional standards (or it can be of superior quality).



Certification requirements



The vehicle manufacturers' authorised partners (authorised dealers and authorised repairers) have under the BER the obligation to use parts that are at least of matching quality, of original quality or even of superior quality. In order to facilitate sales from independent distribu-

tors to the authorised partners of the vehicle manufacturers, and in order to avoid possible legal challenges from the vehicle manufacturers, parts suppliers are invited to issue – on demand – a (self-) certificate for the quality of their parts (e.g. in the packaging, as a separate declaration, or a notice on the Internet).

The formal certification requirement does not apply in the case of sales of spare parts to independent repairers. However, for marketing reasons and for the promotion of the quality label 'original spare parts' or 'matching quality parts' in the independent aftermarket, it might be advisable to enclose such a quality certificate for these sales also.

Opportunities

The new 'original spare parts' definition opens new marketing opportunities for spare parts suppliers, independent parts distributors and independent repairers. All independent market operators should consider making more extensive use of the terms "original spare parts" and "matching quality parts".

The promotion of these quality labels through advertising and marketing activities will become an asset - in particular as consumers are likely to become increasingly aware of the true origin of spare parts used to repair their vehicles and will have more say as to what spare parts are used and where they come from.

Authorised dealers and authorised repairers

Freedom to purchase competitive spare parts from the independent aftermarket

Under the new Regulation, the formerly mandatory link between the sale of new vehicles and after-sales services has been removed. As far as sales and service are concerned, dealers can either specialise in one or the other or offer both. Moreover, dealers who have lost their contract, or independent repairers, can apply for an authorised repair contract not only for a specific brand, but also for several brands (multi-brand repair). However, the advantages or possible inconveniences of becoming – through a brand-specific authorised repair contract - part of the service system of a vehicle manufacturer, compared to the option of remaining independent, should be carefully analysed.



Concerning spare parts, it is important to underline that both contractual partners, the authorised dealer and the authorised repairer, have the right freely to purchase 'original spare parts' as well as spare parts that are at least of 'matching quality' (if not of superior quality) from independent parts wholesalers. This creates an efficient supply alternative and increases quality competition. The EU-Commission considers any restriction to this right imposed by a vehicle manufacturer as a serious violation of the new BER.

It is worth noting that the EU Commission also underlined that, if a vehicle manufacturer himself offers spare parts of a differing quality (e.g. an "economy line"), he may not forbid his contractual partners the procurement of spare parts, from independent distributors, which correspond with *this* quality standard. The vehicle dealer or authorised repairer may ask for a quality (self-) certificate from the parts producer.

Opportunities

Independent parts wholesalers may proactively promote their spare parts and services to vehicle dealers and authorised repairers.

Independent parts wholesalers can ask their suppliers for a quality (self-) certificate for their sales to dealers and authorised repairers, specifying whether the respective part "is an original spare part or a spare part of matching quality as defined in the BER". Parts suppliers are invited to comply with such a request in order to make use of the advantages of such a quality certificate for their sales and in cases of potential challenges by

vehicle manufacturers. By issuing such a certificate, the burden of proof for the quality of the spare part is reversed and a vehicle maker possibly questioning the quality would have to prove non-compliance with the BER definition.

In daily business, attention should be paid to where the vehicle manufacturer offers OES parts with a different quality. In this case, the dealer/authorised repairer may then purchase – and should be encouraged to do so - spare parts from the independent aftermarket matching *this* quality.

Spare parts suppliers



Freedom of supply to the independent aftermarket



Under the new Regulation, vehicle manufacturers may not hinder their OE-suppliers from also supplying their components to independent parts distributors or directly to inde-

pendent or authorised repairers. The latter is however logistically inefficient. Moreover, the original parts producers may brand their OE-components, which they supply for vehicle assembly and parts supply/services to vehicle manufacturers, with their trademarks. The latter represents an essential requirement for effective competition in the repair market. The true origin of a component can only be recognised by consumers and repairers by means of the parts producer's trademark. Of course 'original spare parts' and competitive spare parts that are sold to the independent aftermarket bear only the trademark of the spare parts producer.

Opportunities

Spare parts suppliers have the statutory right to sell the parts they produce for the original equipment on the independent aftermarket as well (of course branded only with their own logo). The number of parts not available to the independent aftermarket because of restrictive practices by vehicle makers should decrease considerably. Since the contractual situation of the parts suppliers may often be an obstacle to complaints from their side, distributors should monitor the market and give notice when they observe that certain

parts, produced by their regular suppliers, are not made available to them.

OE-parts suppliers may actively promote their brand and systematically put their logo on the OE-equipment so that consumers can be made aware of the real origin of a component.

Service, maintenance and repair during the warranty period

New service opportunities for independent repairers

In its Explanatory Brochure the EU-Commission introduced an important clarification regarding the question of whether independent repairers may carry out normal maintenance service and repair jobs *during the warranty period*. Many vehicle makers tend to make the statutory warranty claims of a vehicle owner universally dependent upon the condition that all service and repair must be carried out by a vehicle dealer / authorised repairer and that only the vehicle manufacturer's 'original spare parts' must be used. This practice has been ruled out as unfair customer tying by the EU Commission.



The following distinction must be made: For real warranty cases, free customer service or recall actions, a vehicle manufacturer has the undoubted right to demand from his authorised partners that they exclusively use the "original spare parts" that were delivered by him. This is legitimate, as in these cases the vehicle manufacturer must pay for the faulty part and rectify the damage for the customer. However, this must be distinguished from cases of *normal service, maintenance and repair jobs* (e.g. after an accident) in the course of the warranty period, i.e. instances in which the issues of warranties, free customer service or recall actions are *not* concerned.

The EU Commission renders it clear that the consumer shall not lose his warranty claims against the vehicle manufacturer if a *normal service, or repair work*, has been carried out by an independent repair outlet. The vehicle manufacturer may thus not *generally* refuse a warranty, e.g. on a starter or a faulty electrical window, if e.g. an oil change has been made by an independent repairer. However, if the faulty repair of an independent repairer is the cause of the damage, the independent repairer is liable for it.

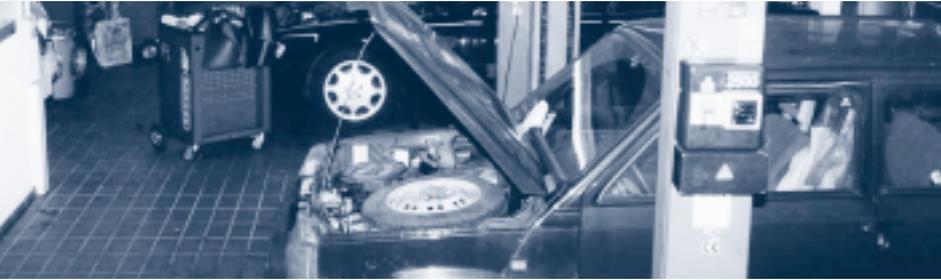
The clarifications apply to the two years' legal warranty, but the EU Commission has expressly included vehicle manufacturers' extended guarantees and other contractual warranties (consumer rights that go beyond the two years statutory minimum period provided by the Consumer Goods Directive 1999/44/EC).

Inform your national association if you come across a case where a warranty claim has been rejected by a vehicle manufacturer because a repair or service has been performed by an independent repairer, even though there is no causal link to the damage. The association will send all evidence to FIGIEFA.

Access to technical information



New service opportunities for independent operators



The independent repair sector represents a valuable and efficient lower cost and service alternative for the consumer, but over the past few years has been increasingly squeezed out by a lack of access to the technical information and diagnostic equipment necessary to repair today's vehicles.

The new BER aims at changing these shortcomings, giving independent operators such as independent repairers, roadside assistance operators, manufacturers of equipment tools, and also independent parts wholesalers, a broad right of access to technical information, tools, equipment and training. This includes the unrestricted access to and the use of electronic control and diagnosis systems. In particular independent spare parts wholesalers have been recognised by the EU Commission as being important for the proper functioning of the independent repair market. The opportunity of combining the sale of spare parts with an "information package" of technical information tailored to the repair case will enable independent spare parts distributors to develop their service function further. The EU-Commission has adapted the new BER to the modern needs of service and repair of vehicles.

Opportunities

- Independent operators must receive the same technical information as authorised dealers / repairers, i.e. they have right of access to all technical information required for maintenance, servicing and repair. Vehicle manufacturers must take the necessary precautions, so that as from 1st October 2003, direct access to their technical information is ensured.
- The new BER also grants the right of "reprogramming", an updating of the original software for repair purposes, which is nowadays more and more required for the starting and remobilising of vehicles after many service/repair jobs. This may be closely associated with the anti-theft provisions of the vehicle but anti-theft protection should not be misused as a pretext to foreclose access to technical information. Repairers and vehicle manufacturers should co-operate to use security procedures such as those described in ISO 15764 to allow such re-programming by responsible repairers.
- The cost of accessing technical information must be "appropriate", i.e. the information must be structured in such a way that independent market participants are not forced to buy more than the necessary amount of information. Access must be given to independent operators in a non-discriminatory, prompt and proportionate way, which does also include that the cost for the technical information shall not be discriminatory for independent operators.
- Technical information must be "usable". It does not just have to be theoretically available. It must be possible to make use of it in practice.
- Independent repairers may experience difficulties with certain repairs, partly because of the time required and complexity of finding technical information on manufacturers' web sites for different types of motor vehicles. A form of electronic standardisation is currently being researched under the On-Board-Diagnostics Directive (98/69/EC), which in time should significantly improve the access to technical data, also under the BER provisions

Access to vehicle manufacturers' "captive parts"

Via dealers and authorised repairers

Authorised dealers and authorised repairers must give access to the so-called "captive parts" of vehicle makers to independent repairers. These can be components that are exclusively produced by vehicle manufacturers themselves (e.g. chassis, engine block or certain body parts) or on which vehicle makers hold a valid industrial property right. In this way, the new Regulation intends to ensure that all independent repairers receive the necessary parts for a repair, even the captive parts that the independent distribution cannot deliver. Vehicle dealers and authorised repairers may not refuse the sale of such vehicle manufacturers' original spare parts to independent repairers. However, this does not provide any insights into the discounts on these parts: independent repairers receive, in many cases, captive parts at unattractive prices and their competitiveness is thus reduced.



Obtaining spare parts which are de facto 'tied' and that independent parts distributors can not deliver, through the authorised partners of vehicle manufacturers, is economically often not viable. Ensuring that the range of components freely available to independent repairers is as broad as possible remains a goal of FIGIEFA as sector federation.

Authorised distribution contract for vehicle makers' original spare parts

Regulation (EC) 1400/2002 differentiates between sales channels into the sales of new vehicles, the sales of spare parts and repair and maintenance services. As a consequence and in conformance with this, there is thus the option for vehicle manufacturers of offering



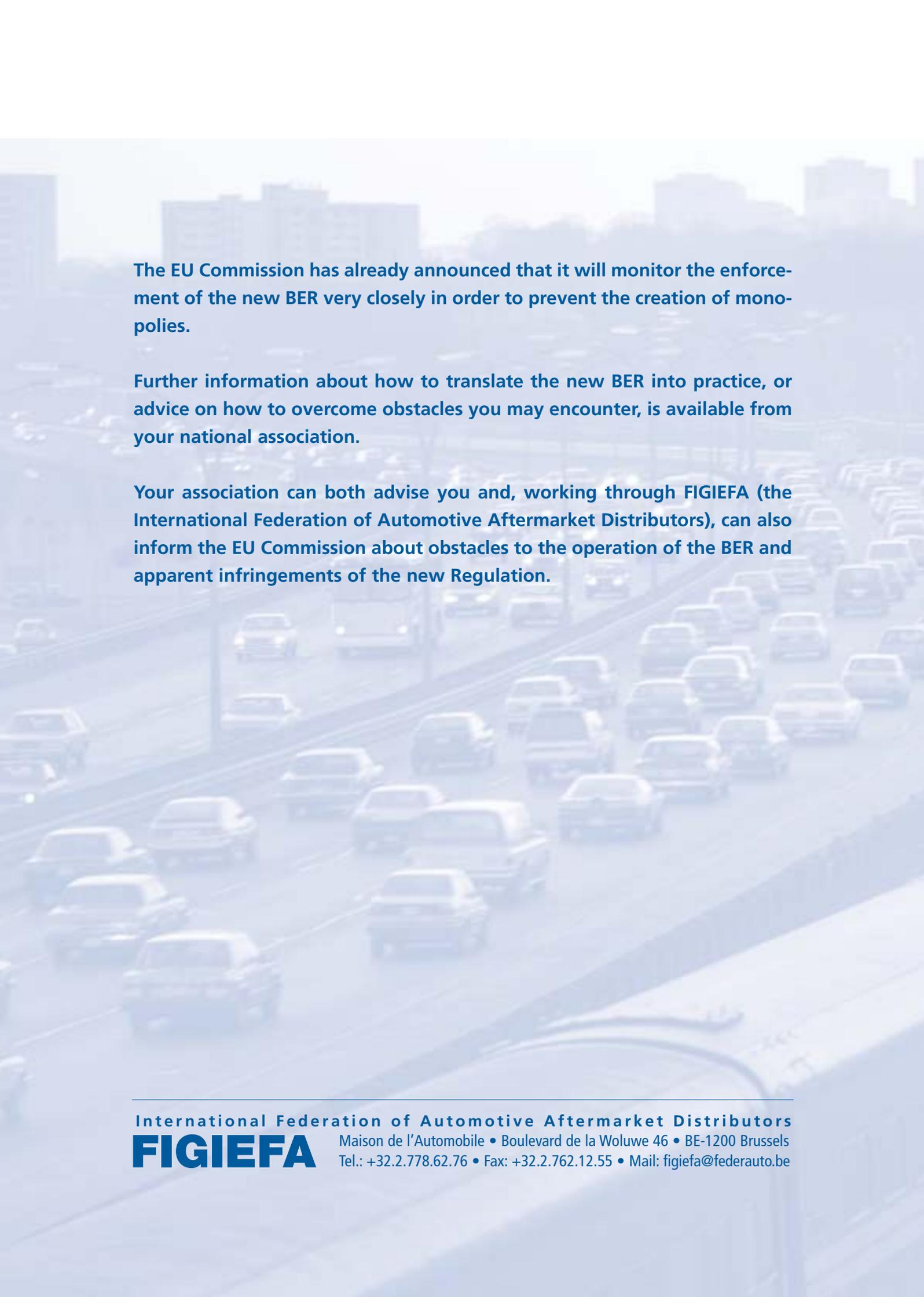
three separate contracts to their contractual partners (whereby a partner can carry out all three functions, two functions or just one of the three functions):



- distribution contract for new vehicles;
- distribution contract for replacement parts (“authorised” parts distributor);
- contract for service, maintenance and repair (“authorised” repairer).

Concerning the option of an authorised distribution contract for vehicle manufacturers’ original spare parts, only qualitative selection criteria will be possible, because in most cases vehicle manufacturers exceed the threshold market share of 30% in the case of spare parts for vehicles of their respective model range (BER 1400/2002 states that the exemption for a quantitative restriction of distribution only applies if the suppliers’ share of the relevant market in which it sells vehicles, vehicle spare parts or maintenance work does not exceed 30%. The relevant market for vehicle spare parts can, for technical reasons, fundamentally only be the market for one respective vehicle model. The competition only takes place between the parts which can be used for this particular vehicle model).

It can thus be concluded that only a qualitative selective distribution system is possible for a vehicle manufacturer’s original spare parts. If then an independent parts distributor fulfils the qualitative criteria of the vehicle manufacturer (with regard e.g. to possible stock keeping requirements or the qualification of the personnel), he could be a candidate for an “authorised parts distribution contract”. Many experts conclude that there exists a legal right that obliges vehicle manufacturers to grant such a spare parts distribution contract also to independent parts wholesalers on the basis of qualitative criteria. However, it has not been conclusively clarified under which conditions a legal right to an authorised spare parts distribution agreement exists, i.e. in which cases there is a single “authorised parts distribution contract” of a vehicle manufacturer, which could serve as example for non-discrimination of other distributors. FIGIEFA encourages distributors to contact vehicle makers of their choice if a distribution contract for a vehicle manufacturer’s original spare parts fits into their strategy.



The EU Commission has already announced that it will monitor the enforcement of the new BER very closely in order to prevent the creation of monopolies.

Further information about how to translate the new BER into practice, or advice on how to overcome obstacles you may encounter, is available from your national association.

Your association can both advise you and, working through FIGIEFA (the International Federation of Automotive Aftermarket Distributors), can also inform the EU Commission about obstacles to the operation of the BER and apparent infringements of the new Regulation.

International Federation of Automotive Aftermarket Distributors

FIGIEFA

Maison de l'Automobile • Boulevard de la Woluwe 46 • BE-1200 Brussels
Tel.: +32.2.778.62.76 • Fax: +32.2.762.12.55 • Mail: figiefa@federauto.be