Right to Repair in the Automotive Industry

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Abstract

The automotive aftermarket keeps 1.5 billion vehicles globally on the road while contributing $1.8 trillion to the global economy. Throughout the car's life, multi-brand repair shops perform a huge majority of the repairs needed. This vibrant industry and the consumer choice that it creates are being threatened by a lack of access to wirelessly transmitted vehicle repair and maintenance data and information.

Without the convenient and affordable choice of independent parts and repair, consumers will have limited access to affordable vehicle services and repair. These restrictions can have negative effects on local economies and the well-being and safety of millions who rely on vehicle transportation daily.

In the chapter, we will go through some of the most significant legislative and regulatory dossiers being adopted at the European Union and United Nations level, affecting the automotive aftermarket and consumers' right to repair their vehicles at a workshop of their choice.

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RIGHT TO REPAIR IN THE AUTOMOTIVE INDUSTRY

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1 Introduction

Globally, the automotive aftermarket keeps 1.5 billion vehicles on the road while contributing $1.8 trillion to the global economy. Throughout the car's life, multi-brand repair shops perform a huge majority of the repairs needed. This vibrant industry and the consumer choice that it creates are being threatened by a lack of access to wirelessly transmitted vehicle repair and maintenance data and information.

Without the convenient and affordable choice of independent parts and repair, consumers will have limited access to affordable vehicle services and repair. These restrictions can have negative effects on local economies and the well-being and safety of millions who rely on vehicle transportation daily.

Within the Global "Right to Repair" campaign, FIGIEFA has been working tirelessly to secure the businesses of thousands of European aftermarket players, including independent parts distributors, independent workshops, and a wide variety of mobility service providers.

In this chapter, we will go through some of the most significant legislative and regulatory dossiers being adopted at the European Union and United Nations level, affecting the automotive aftermarket and consumers' right to repair their vehicles at a workshop of their choice. In all these pieces of legislation, FIGIEFA has contributed with evidence gathering, research and position papers, advocating directly to different levels of policymakers, writing articles and open editorials, and joining forces with other stakeholders to deliver successful campaigns.

2 Dossiers and Fields of Action

1. **Motor Vehicle Block Exemption Regulation (MVBER).** This is *the* pilar legislation for our industry, granting the playing field for independent operators.

On April 17, 2023, the European Commission adopted the revised and updated MVBER and its Supplementary Guidelines ('SGL'), which were set to expire on May 31, 2023. The new MVBER regime is applicable until May 31, 2028.

In the accompanying press release, the European Commission clarified that this limited prolongation will allow timely adaptations to possible market changes, such as those resulting from vehicle digitalization, electrification, and new mobility patterns that are expected to consolidate in the coming years.

An overarching aim of the new MVBER regime is to ensure that independent aftermarket operators, including workshops and other independent market players within the automotive supply chain, can have access to the relevant inputs that are necessary for vehicle repair and maintenance.

The key provisions in the regulation as such remain unchanged. They can be summarized as follows:

- A vehicle manufacturer may not prevent its authorized repairer from selling OEM-branded spare parts to an independent repairer *(this rule aims at ensuring access of independent repairers to OEM captive parts in particular)*.
- A vehicle manufacturer may not prevent its original suppliers of parts, repair tools or diagnostic or other equipment from selling the same also to independent wholesalers or repairers *(this rule helps independent wholesalers access parts from manufacturers who also supply the vehicle manufacturer, except in limited circumstances related to tooling costs, IP or know-how)*.
- A vehicle manufacturer may not prevent its component suppliers from placing their own trademark or logo on the parts supplied *(dual branding)*.

Thanks to the work done by FIGIEFA and other aftermarket stakeholders, some important updates were made in the new MVBER, with great impact on the industry.

Main Changes in the Revised Text.

In essence, compared to the previous MVBER regime, the revised SGL entail a number of changes aimed at

a) Providing a stronger legal framework to avert market foreclosure risks for independent operators.
b) Enhancing clarity of the rules and alignment to technological progress and market realities, in key areas of specific interest for FIGIEFA.
c) Nevertheless, they have also failed to address some significant gaps.

When assessing the competitive impact of vertical agreements on the motor vehicle aftermarkets, the European Commission aims at preserving competition both between the members of authorized networks and between those networks and

independent operators. To this end, the revised the MVBER Sector-specific Guidelines (SGL) establish the principle whereby the selective distribution agreements entered into between a vehicle manufacturer and its authorized repairers and/or parts distributors may fall foul of Article 101(1) if the vehicle manufacturer prevents *"access for independent operators to essential inputs"* that are necessary for repair and maintenance.

This concept of "essential inputs" includes all items available to vehicle manufacturers the withholding of which may have an *"appreciable impact on the ability of independent operators to carry out their tasks and exercise a competitive constraint on the market."*

In addition to technical information, this concept explicitly covers also tools, training, and vehicle-generated data (para. 62). Moreover, as the list of essential inputs in paragraph 62 is merely illustrative and nonexhaustive, also vehicle manufacturers' captive parts could fall within its scope.

Importantly, the revised SGL include additional and useful examples of what may qualify as technical information, namely information required to work on advanced driver-assistance systems (ADAS) and battery management systems, as well as activation codes that are needed to install certain replacement parts.

2. **Access to Data.** Connected cars allow innovative remote functions that enable multiple new use cases and business models. To ensure fair competition and being able to keep offering digital services in the independent aftermarket, FIGIEFA is working on both, the horizontal legislation (**Data Act**, to be approved by June this year) and a **Sector-Specific legislation on access to in-vehicle data** (commission proposal to be published by Q3).

The **Data Act** will provide a horizontal regulatory framework and cover almost all categories of connected products, with the objective of ensuring fair access to and use of machine-generated data for users, tackling barriers to access for both consumers and businesses.

The automotive aftermarket and mobility services sector represents an example of an industry being affected by the current lack of "access to data". Fairly regulated access to vehicle data could support the digital transformation of an industry with over 4.5 million jobs, most of which are in SMEs. Currently only one player (i.e., the vehicle manufacturers) uses its privileged position to prevent other stakeholders from effectively accessing data. This has hampered independent service providers in the aftermarket and mobility services sector from the ability to provide competitive digital services to users, applying their own innovation potential.

Since the publication of the Data Act proposal by the European Commission, FIGIEFA has strongly supported its objectives.

The Data Act represents a step forward in the effort to promote a genuine Internal Single Market for data based on fair and competitive rules. However, as a horizontal piece of legislation, it is not, in itself, sufficiently tailored to respond to the specifics of the automotive aftermarket. This is why a future sector-specific legislation for the

automotive sector is still needed, as clearly affirmed by various commission studies and the ITRE committee of the European Parliament.

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3 What Does the Sector Need?

The European Commission has documented through several studies and, most recently, through a Public Consultation and a Targeted Stakeholder consultation, that there are systemic barriers (intrinsic to the vehicle design—and many other structural and behavioral impediments) to fair access of Independent market operators to vehicle-generated data, functions, and resources. Such systemic gatekeepers and other barriers cannot be remedied through the horizontal Data Act.

The Data Act itself emphasizes this very point: "… new rules are needed to ensure that existing vehicle type-approval legislation is fit for the digital age and promotes the development of clean, connected and automated vehicles. Building on the Data Act as a framework for the access and use of data, these rules will address sector-specific challenges, including access to vehicle functions and resources."

Without the definition of stand-alone sector-specific legal and technical rules covering data, functions, and resources, it will not be possible for independent service providers to develop their own competing digital services in advance. Without such rules, there will simply be no competing service providers to whom users could consensually transfer their data, as intended by the Data Act.

The commission forecasts that the vehicle-generated data market could potentially reach €400 billion by 2030. Preventing fair competition in Europe, delaying innovation, and loading more costs on European consumers and businesses for

vehicle-generated data services seems an unlikely recipe for Europe leading in that global market.

The commission originally scheduled this legislation for adoption in 2021, and the commission's proposal for the Data Act itself restated the need for sector-specific legislation to address these issues.

The access to in-vehicle data, functions, and resources is not only crucial but absolutely imperative for automotive suppliers in Europe to survive and thrive in an ever-evolving industry. Without fair access, the entire automotive ecosystem, including suppliers and the aftermarket sector, cannot remain competitive versus tech companies that are already dominating the infotainment systems of vehicles, nor can we continue to innovate the components and services that meet new digital demands. Therefore, a sectoral and legally binding regulation on access to in-vehicle data is urgent to guarantee users' freedom of choice, fair competition but also to enable both the deployment of zero-emission mobility and the development of a genuine European business ecosystem that is independent, efficient, and competitive.

The European Commission confirmed they are working on a legislative proposal in this regard that would be ready in the second half of 2023.

3. **Repairs Clause Under the Design Protection**. The Repair Clause is an indispensable precondition to achieve an accessible and affordable right to repair at the service of the circular economy. Consumers should always be able to choose between competing suppliers of spare parts to repair their products. After +30 years of legislative attempts, the European Commission has brought back this issue to the table and FIGIEFA is fighting to secure a real right to repair for European consumers, also when it comes to **visible car parts**.

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On November 28, 2022, the European Commission published proposals for the revision of the EU Design Directive (COM(2022) 667) and the EU Design Regulation (COM(2022) 666). FIGIEFA appreciates the proposals, especially the introduction of an EU-wide Repair Clause in the Design Directive (Art. 19) and the confirmation of a permanent Repair Clause in the Design Regulation (Art. 20a).

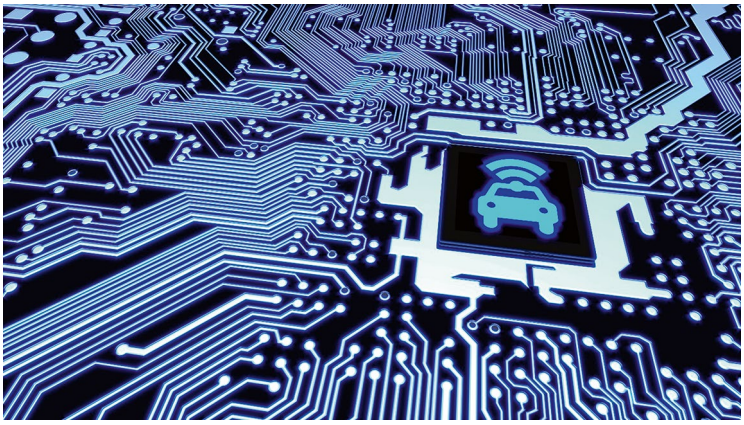
Both legislative proposals ensure on one side full protection of manufacturers' design rights over their products (such as a vehicle) and avoid on the other side monopolies in aftersales markets on visible spare parts (such as vehicle body panels, headlights, and windscreens) by excluding those for the purpose of repair and replacement from such protection. Today such Repair Clauses exist only in some EU Member States. We strongly support the intention of the European Commission to deploy this approach throughout the entire European Union. Harmonized rules for design protection and exemptions are a major step forward to simplify the EU regulatory framework, and a well-rounded Repair Clause would ensure competition and consumer's choice for visible spare parts, submit their prices to competition, promote innovation, and make the right to repair becoming a reality for all European consumers1.

FIGIEFA believes, however, that the intention behind this inclusion could materialize more efficiently with some targeted improvements. Therefore, we call on the European Parliament and the Council to pay attention to the following issues:

- An efficient Repair Clause needs to cover both new and existing designs to fully benefit the consumers. The European Commission itself recognized that there is "no broad economic justification" for maintaining design protection on visible spare parts. Therefore, the European Commission's proposal of a compulsory 10-year transition period for Member States to implement a Repair Clause in national law is not justified. This will prevent the EU-wide Repair Clause in the Design Directive from having any effect on all existing products for another 10 years, denying consumers the benefit of a right to an affordable and accessible vehicle repair. FIGIEFA urgently call on the European Parliament and the Council to agree on a shorter and flexible transition period, leaving Member States the choice of applying the Repair Clause to all designs in advance. A maximum transition period of up to 3 years would provide sufficient time for Member States to transpose the Directive into national law, while still being able to apply the Repair Clause to existing designs at an earlier date.
- It is also important to ensure clarity and legal certainty in the wording of the Repair Clause so that it applies uniformly and unequivocally to the benefit of all European consumers and businesses. The undue restriction of the Repair Clause to "form-dependent component parts of complex products only" (Recital 35), "upon whose appearance the design of the component part is dependent" (Art. 19(1))4, and the unclear and redundant consumers information requirements5, should be removed.

4. **Cybersecurity.** With the rise of connected and automated driving, on one side, and the general increase of new cyberthreats, on the other side, legislators worldwide felt the need to introduce regulation for addressing the issue of cybersecu-

rity in the automotive sector. Whilst fully supporting the protection against cybersecurity threats, FIGIEFA upholds that legislation should, however, not lead to granting vehicle manufacturers an arbitrary control of the cybersecurity implementation.



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UNECE, a body of the United Nations dealing with mobility issues (among other topics), finalized in June 2020 two pieces of legislation on the matter, Regulation No. 155 on "Cybersecurity" and Regulation No. 156 for "Software Updates." These two regulations were transposed into the European Union's legislation in mid-2021 and have been applicable since July 2022 for newly type-approved vehicles and will be applied from 2024 for the existing vehicle park.

With Regulation No. 155, UNECE has established an initial inventory of potential cyberthreats and corresponding mitigation measures. These mitigation measures, however, are not concrete implementation measures, but give the freedom for vehicle manufacturers to implement their own proprietary security controls. They are now allowed to set their own benchmark (i.e., "what is adequate security?") and implement their own proprietary cybersecurity measures as part of vehicle type approval. Thereby, each vehicle manufacturer will create its own cybersecurity management system to set up organizational processes and implement security/software update-related measures for each vehicle type. As a result, vehicle manufacturers can implement access control mechanisms and practices to address cybersecurity concerns.

The proprietary cybersecurity strategy of the vehicle manufacturers could make it impossible to use spare parts from independent sources as they could be rejected by the vehicle in the name of "security." This exclusion could have a profound and negative impact on the entire portfolio of spare parts identified as "cybersecurity relevant" (e.g., any part with electronic components).

First examples are access restrictions to the OBD port via proprietary vehicle manufacturers' security certificates, proprietary vehicle manufacturers' codes (QR codes or software) needed for the activation of spare parts (often with vehicle manufacturers' own diagnostic tools), or the general prevention of remote communication with the vehicle and its data. All these restrictions could now be imposed widely under the legal requirements of cybersecurity protection.

This would prevent independent, multi-brand businesses to conduct a wide range of repair and maintenance services and drive further consumers into the vehicle manufacturers' contracted networks.

FIGIEFA fully supports measures to protect connected vehicles against cybersecurity threats. However, the process of including UNECE Cybersecurity Regulations into the European Union's legislation should not lead to granting vehicle manufacturers an arbitrary control of the cybersecurity implementation. The European Union must take the necessary measures to avoid that the entire automotive aftermarket (and related digital and mobility value chains) is disrupted. This is why FIGIEFA, together with other aftermarket organizations gathered in "AFCAR" (Alliance for the Freedom of Car Repairs), is currently in the process of informing European Union's officials and Member States representatives about this issue. The objective is to ensure that the transposition of the UNECE Regulations into the European Union's legal framework is accompanied by robust implementation clauses to ensure that all stakeholders continue to have the ability to operate, in a nondiscriminatory and competitive manner, whilst addressing cybersecurity. Without such measures, the aftermarket would be at risk. In more detail, FIGIEFA is calling upon decision-makers to ensure, that is,

- Cybersecurity compatibility and interoperability for replacement parts.
- Cybersecurity compatibility and interoperability for multi-brand diagnostic tools.
- Setting up a European Union-wide certification scheme by extending the current SERMI scheme to cybersecurity (including also an approval and authorization scheme for diagnostic tools and any other operator involved in providing mobility services).
- Amending the provisions on the OBD port to define rules for the period of proprietary issuing of security certificates by vehicle manufacturers until the European Union-wide certification scheme is setup.

In parallel, FIGIEFA is organizing technical meetings with spare parts experts to work on concrete implementation requirements for cybersecurity and is arranging informational webinars to prepare FIGIEFA members for cybersecurity. Last but not least, FIGIEFA commissioned an independent cybersecurity study, with the aim to show that it is perfectly possible to have the highest level of cybersecurity protection, whilst at the same time allowing independent communication with the vehicle, its data, and resources.

5. **Sustainability.**

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Environmental, social, and governance (ESG) issues are increasingly affecting the automotive aftermarket as well. Against this background, the two sector associations—CLEPA, the European Association of Automotive Suppliers, and FIGIEFA, the European Association of the Independent Parts Distribution—initiated the Forum on Automotive Aftermarket Sustainability (FAAS). It is a collaborative endeavor aiming to provide a platform where all participants in the automotive aftermarket can exchange ideas, cultivate, and adopt sustainable practices.

The FAAS aims to establish itself as the foremost sustainability initiative within the aftermarket sector. To accomplish this, the FAAS established the following shared objectives:

- Engage and unite all relevant stakeholders in the automotive aftermarket sector, leveraging our collective influence to foster a more sustainable aftermarket.
- Propel transformation within the automotive aftermarket supply chain by offering sustainable solutions and contributing to global initiatives such as the energy transition, low-carbon production, pollution reduction, and the circular economy.
- Bridge knowledge gaps within the sector and equip companies with the necessary tools to actively participate in sustainability efforts.
- Address various crucial topics, such as tracking and reducing CO_2 emissions, optimizing packaging, promoting remanufacturing and recycling practices, and optimizing logistics.

To accomplish these objectives, the FAAS prioritizes the critical concerns surrounding independent aftermarket operations. Consequently, four distinct working groups were established, each with its specific focus:

- **Working Group 1** is preparing a study to assess the CO_2 footprint of the automotive aftermarket sector and the CO_2 impact of maintaining a vehicle on the road for longer vs. replacing it with a new vehicle.
- **Working Group 2** is addressing existing obstacles that hinder the remanufacturing of components through improved knowledge and understanding of this practice while emphasizing its significant contribution to the circular economy, with the ultimate goal to increase the market share of remanufactured products.
- **Working Group 3** is developing a Product Carbon Footprint methodology that can be applied to all players in the automotive aftermarket sector and be consistent with other initiatives in Europe.
- **Working Group 4** is focusing on optimizing supply chain logistics by developing relevant partnerships between suppliers and wholesalers and preparing recommendations for reducing the environmental footprint of shipping.

The FAAS is open to all players in the automotive aftermarket. For further information, write to laurence@ext.figiefa.eu

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Álvaro de la Cruz Tomás is a political scientist by training who has worked in communication and marketing for more than 10 years. He worked for Spanish president Mariano Rajoy's office from 2012 to 2017 and after he was Communications Lead at EIT Digital. He led the agency's team working on the EPP's 2019 European Elections, then joined the Martens Centre in March 2020, and FIGIEFA in 2022. Álvaro holds a BA in Political Science by Universidad Complutense de Madrid, a Certificate on European Political Studies by Sciences Po Strasbourg, and a Master on Digital Marketing by EAE Business School. The content of this chapter and situation of the legislative dossiers forementioned were written in July 2023.