



# Alliance for the Freedom of CAR Repair in the EU

## European Commission Report on the Operation of the (Euro 5/6) System of Access to Vehicle Repair and Maintenance Information (RMI)<sup>1</sup>

### Impact on the current revision of the Vehicle Type Approval Framework Regulation COM(2016) 31

#### AFCAR calls for updates now!

23<sup>rd</sup> Jan. 2017

The AFCAR<sup>2</sup> Alliance speaks on behalf of a wide range of stakeholders representing major automotive aftermarket operators, car dealers, the European leasing/rental and lubricants industry as well as motorist consumers (please find description at the end of this paper) employing 3.5 million people in over 500.000 companies to service the 285 million passenger cars and duty vehicles in the EU.

**AFCAR welcomes** the (long awaited) publication of the Commission Report on the functioning of the entire multi-brand aftermarket supply chain. The existence of independent operators (**IOs**) ensure competition for vehicle manufacturer networks in the aftermarket sector and consumer choice. Affordable mobility is crucial to keep repair costs under competitive control and to avoid that vehicles that are not properly maintained, as this would have an impact on emissions, public health, road safety and the environment.

**We embrace** the Commission's recognition of the importance of Access to vehicle Repair and Maintenance (**RMI**) to guarantee competition and the good functioning of the Internal Market. Access to vehicle RMI is required to carry out a *very broad range of operations related to maintaining a vehicle throughout its lifetime*, including diagnosis of malfunctions, repair services and spare part identification. Therefore, to compete in the vehicle repair market, independent operators must have an "easy, restriction-free and standardised" access to technical information.

The Commission acknowledges the importance of the difficulties encountered by independent operators along the entire aftermarket supply chain<sup>3</sup> in accessing the information. This shows that the 10 years old RMI legislation urgently needs updating.

In particular, **AFCAR welcomes** that the Commission recognises the need to ensure a more efficient functioning of the automotive aftermarket supply chain, such as:

- the need to review the principle of "non-discriminatory access" so as to replace the reference to authorised dealers with vehicle manufacturers (**VMs**) as a more up-to-date benchmark for the scope and the form/format of the RMI information;
- the need to provide RMI in an electronically processable form which responds better to the needs of IOs in the upstream chain with a wholesale function;
- the necessity to have access to information on data on vehicle parts, as identified by the VIN, and through a common structured process;
- the importance of a swift implementation of the "SERMI" scheme on access to security-related RMI;



- the need to improve the procedures for filing complaints with the national Type-Approval Authorities (TAAs) and provide procedural guidance at EU level.

**However, AFCAR regrets that the Commission stays far behind the set of substantial recommendations of the Ricardo-AEA Study, which are of crucial importance for a more efficient functioning of the automotive aftermarket supply chain.**

In particular, **AFCAR regrets** that the Commission report did not take into full consideration the set of recommendations for improvements from the Ricardo-AEA Study<sup>4</sup>, such as:

- the need for **improvement of the overall RMI enforcement structure**: the Ricardo-AEA Study pinpoints several times that “incompleteness” and “delays” in availability and usability of information are among the major problems of the current RMI regime;
- the need for further clarity on specific definitions used in the Regulation in order to avoid misinterpretation of the requirements;
- the creation of **a separate verification body/forum** supporting the type approval authorities in enforcing the RMI Regulations: the Ricardo-AEA Study has indeed shown that many of the hindrances can be overcome when there is an arbitration authority giving guidance on the interpretation of the RMI legislation;
- concerning **manufacturers of diagnostic and repair tools**, the need to receive the technical information in a standardised electronically processable format that can be integrated into multi-brand tools (e.g. ODX or OTX) and to make sure that vehicle manufacturers provide a facility for the validation of Vehicle Communication Interfaces (since vehicle manufacturers have a level of discretion in the way in which they operate within the parameters of the reprogramming standards e.g. ISO 22900 and SAE J2534, creating expensive and time consuming validation requirements for the multi-brand diagnostic tool manufacturers);
- the need of **harmonising the penalties for infringements** of RMI obligations (non-compliance) by VMs (providing guidance on fines at EU level would avoid a patchwork of different national fines/penalties and potential market distortions).

In addition, concerning the access to RMI via OEMs’ websites, the Commission states that most of the issues will be resolved to a great extent by the introduction of the CEN/ISO standards which provide a standardised format for RMI delivery. **However, it is important to clarify that the CEN/ISO standard only standardises the access to the OEMs’ websites, but it does not remedy to problems in substance.**

Moreover, **AFCAR disagrees with the approach that some key problems are only B2B** and therefore “subject to commercial law and agreements by the parties” and outside the scope of the RMI legislation. Those problems are often reported to be of a nature to undermine *de facto* the legislation and basic EU guidance on the principle of “proportionality” would be needed. As an outstanding example, dissuasive fees which deter from buying RMI are often imposed to IOs and a metrics (on a macro-level) for “reasonable fees” defined at EU level would efficiently address such big obstacle in the practical functioning of the current RMI system.<sup>5</sup> If the legislator does not provide for legal guidance in such sensitive aspects such as e.g. pricing or minimum requirements for license agreements, the danger of “litigation to death” for SMEs is obvious.

Furthermore, we would like to pinpoint to a misleadingly worded footnote explanation n. 3 in the EC Report, which insinuate that only older vehicles out of warranty are serviced in the independent aftermarket. As a matter of fact, the sector-specific Guidelines accompanying the Commission’s Automotive Aftermarket Block Exemption Regulation N° 461/2010 re-clarified that consumers have (and use) the right to service and maintain their vehicles in any workshop of their choice “from day one” (during both the statutory warranty period and any extended warranty period) without invalidating per se the vehicle’s warranty.

A number of Members of the European Parliament acknowledged the necessity and urgency of addressing some of the shortcomings of the current RMI legislation. They have tabled a series of amendments addressing most pressing issues pinpointed by the Ricardo-AEA Study in the current revision of the EU-wide Vehicle Type-Approval regime<sup>6</sup>.

**AFCAR calls upon EU decision-makers to tackle the structural adaptations on RMI now in the current legislative procedure on the Vehicle Type-Approval Regulation. The necessary improvements shall not be deferred until the next revision of the Type-approval legislation, which will not happen in the near future. Our more than 500.000 SME companies' competitiveness and future depend on a well-functioning RMI framework.**

**AFCAR urges you not to delay improvements for the analogue era and mingle them with 'adaptations to technical progress' due to digitalisation. This complex issue is currently under in-depths examination and shall not hamper the adaptation of the current RMI regime.<sup>7</sup>**

**The direct life-line and communication to the vehicle through the current On-Board-Diagnostics (OBD) port shall be explicitly maintained.**

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#### About AFCAR

Created in 1997, the AFCAR Alliance speaks on behalf of a wide range of stakeholders representing motoring consumers, the leasing and rental industry, the lubricants industry, and a major part of the automotive aftermarket ranging from test equipment and diagnostic tool manufacturers, parts wholesalers, data publishers as well as independent and authorised repairers (please find a more detailed description at the end of this paper).

Our aim is to promote free competition and fair access to technical information and more generally to all features that allow multi-brand market operators, **employing 3.5 million people<sup>8</sup> in over 500.000 companies, to offer competitive repair and maintenance services to the 285 million motoring consumers and duty vehicles operators in the EU.** Together, our SMEs constitute a dedicated supply chain, which ensures the competitiveness and dynamism of the automotive industry sector as a whole. Our members are an integral part of the European economy. The independent aftermarket value chain ensures lasting innovation and effective competition which provides European motorists with the freedom of choice in the aftermarket care of their vehicles.

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<sup>1</sup> On the 9th of December 2016, the European Commission issued its Report on the findings of the Ricardo-AEA Study on the Operation of the Euro 5/6 System of Access to Vehicle Repair and Maintenance Information (published in October 2014). Report from the Commission to the European Parliament and the Council on the operation of the system of access to vehicle repair and maintenance information established by Regulation (EC) No 715/2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information. Report published on 9.12.2016.

<sup>2</sup> See description of the AFCAR alliance in the last page.

<sup>3</sup> The supply chain includes in particular repairers; manufacturers or distributors of repair equipment, tools or spare parts; publishers of technical information; automobile clubs; roadside assistance operators; operators of inspection and testing services.

<sup>4</sup> Ricardo-AEA Study on the functioning of the system of Access to Repair and Maintenance Information (RMI), dated October 2014.

<sup>5</sup> Germany, for example, can already count on a well-established jurisprudence from the Highest Administrative Court (judgement of July 2012, file no. 6 C 14/11) according to which in the telecoms sector "license fees" in the framework of coercive licenses regarding access to data and information have to be calculated solely based on the "transfer costs", meaning the cost to set up the IT infrastructure to grant access to data.

<sup>6</sup> Commission proposal for a new Vehicle Type Approval Framework Regulation COM (2016) 31, currently being discussed by the European Parliament and Council.

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<sup>7</sup> As a way to address “adaptations to technical progress”, some IMCO amendments suggest an empowerment to the Commission to adopt delegated acts [...] to address technological developments in the field of digital data exchange using a wireless wide area network.

<sup>8</sup> Based on a verification of Eurostat figures 2012 and ‘Car Aftermarket Europe Report 2012’, by Wolk Aftersales Experts.



**ADPA**– the European Independent Data Publishers Association aims to ensure fair access to automotive data and information and to provide competitive framework conditions for independent data publishers. This will allow the publishers to be able to design and provide competitive, innovative and multibrand products and services to operators of the automotive aftermarket.



**CECRA**- the European Council for Motor Trades and Repairs- is the European Federation representing the interests of the motor trade and repair businesses and European Dealer Councils on behalf of vehicle dealers for specific makes. Its main aim is to maintain a favourable European regulatory framework for the enterprises of motor trade and repair businesses it represents.



**EGEA**- the European Garage and test Equipment Association represents both manufacturers and importers of tools and equipment for the repair, servicing and technical inspection of vehicles, as an integral part of supporting the automotive industrial value chain. Its role is to provide a healthier environment for the garage and test equipment industry throughout Europe and a stronger support to ensure competitive consumer choices for affordable mobility against the background of the increasing vehicle technology and complexity.



The **FIA** is a worldwide federation of Motoring and Touring Clubs. The FIA represents the interest of these members as motorists, public transport users, pedestrians and tourists. Its primary goal is to secure a mobility that is safe, affordable, sustainable and efficient



**FIGIEFA** is the international federation of independent automotive aftermarket distributors. Its members represent retailers and wholesalers of automotive replacement parts and components and their associated repair chains. FIGIEFA's aim is to maintain free and effective competition in the market for vehicle replacement parts, servicing and repair.



**Leaseurope** - the European Federation of Leasing Company Associations- represents both the leasing and automotive rental industries in Europe. The scope of products covered by Leaseurope members' ranges from hire purchase and finance leases to operating leases of all asset categories (automotive, equipment and real estate). It also includes the short term rental of cars, vans and trucks.



**UEIL** (the Union of the European Lubricants Industry) represents the interests of the lubricants industry in Europe, with a special focus on SMEs and independent companies that produce lubricants and metal processing fluids essential for the automotive and industrial sectors.



**AFCAR** - Alliance for the Freedom of Car Repair in the EU. Created in 1997, AFCAR is an alliance of the independent European associations with the aim is to promote fair competition in the market for vehicle servicing and repair. Members of AFCAR are: ADPA (European Independent Data Publishers Association), CECRA (European Council for Motor Trades and Repair), EGEA (European Garage Equipment Association), FIA (Fédération Internationale de l'Automobile), FIGIEFA (International Federation of Automotive Aftermarket Distributors) and Lease Europe (European Rental and Leasing Industry), UEIL (Union of the European Lubricants Industry).