

**Response by Directorate General IV of the EC Commission  
to the MMC, on the interpretation of EC Regulation 123/85  
as it affects the supply of spare parts**

The MMC said:

Article 51(2)(c) states that in 'any scheme for aggregating quantities or values of goods ... for the purpose of calculating discounts' the supplier shall '**at least distinguish between**' supplies of cars, cars parts and other goods. The interpretation to be put on the words in heavy print is not entirely clear. In your opinion would bonus schemes offered to dealers (but not included in the terms of suppliers' agreements) be consistent with this provision if they reward a dealer by means of an extra percentage discount on all sales of cars within a defined period in return for achieving a target number of 'points', aggregated for performance against a number of separate targets including sales targets for sales of cars, sales of car parts and sales of extended warranties? Is it compatible with the Regulation for a single bonus scheme to cover sales of parts, accessories and number plates?

In response Directorate General IV said:

*'Article 5(1)(2)(c) expressly stipulates that the supplier shall '... at least distinguish between supplies of goods of the three kinds described, in any scheme for the purpose described. The essence of the kind of bonus scheme described in Question 2 (concerning also bonus schemes for accessories) is that the extra percentage discount 'will be given on cars', while calculated on other items whatever they are (parts, accessories, or anything else the supplier wishes to be sold by the dealer).*

*The discount itself therefore fulfils the requirement. If we have correctly understood the type of scheme in question, 'points' are credited as a result of separate sales targets for several categories- whatever they are, and how many of them there are-and then added together, all 'points', from whatever kind of goods, being treated equally and pooled. Such a system, while 'distinguishing' the categories on paper, does not distinguish them in the result. This opinion is confirmed by the purpose of Article 5(1)(2)(c) which is explained by recital (15) as being 'to allow spare parts suppliers which do not offer as wide a range of goods as the manufacturer to compete on equal terms', and to counter 'cumulation of discounts'. The system described clearly cumulates discounts. Under Community law, the recital must be used to interpret the Article. Therefore the Commission's view is that such a bonus scheme does not comply with Regulation 123/85.'*