

CONCLUSION

This leaflet is an outline of some of the principles of the European legal framework relating to the purchase and use of lubricants and other functional fluids.

Vehicle Manufacturers, importers or dealers can be heavily fined if these rules are not complied with.

Any claim in relation to the Regulation should normally be handled in the first instance by a national court.

For any subsequent developments or interpretation of this legal framework, or if you have any further queries, please contact your lubricant supplier.

Presented by:

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PURCHASE AND USE OF LUBRICANTS WITHIN THE EUROPEAN UNION

8) Are lubricants within the Regulation classified as spare parts?

Yes, the lubricants are considered as spare parts within the European Regulation. Thus, all technical information must be readily available to motor vehicle operators.

9) What about bonuses and discount systems including lubricants or other functional fluids put in place by Vehicle Manufacturers?

These systems may be considered as indirect non-compete obligations (see § n°6).

In some circumstances, they could also be analyzed as an abuse of a dominant position in the aftermarket sector (Article 102 TFEU).

10) What can I do if a Vehicle Manufacturer contests the use of a specific lubricant which is, from my point of view, of matching quality?

If a Vehicle Manufacturer wants to contest the use by you of a specific lubricant, it is its responsibility to prove that this lubricant does not meet the Vehicle Manufacturers technical requirements.

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UEIL is the pre-eminent Trade Association in Europe representing the interests of companies involved in the Lubricant Industry.

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OF THE EUROPEAN LUBRICANT INDUSTRY

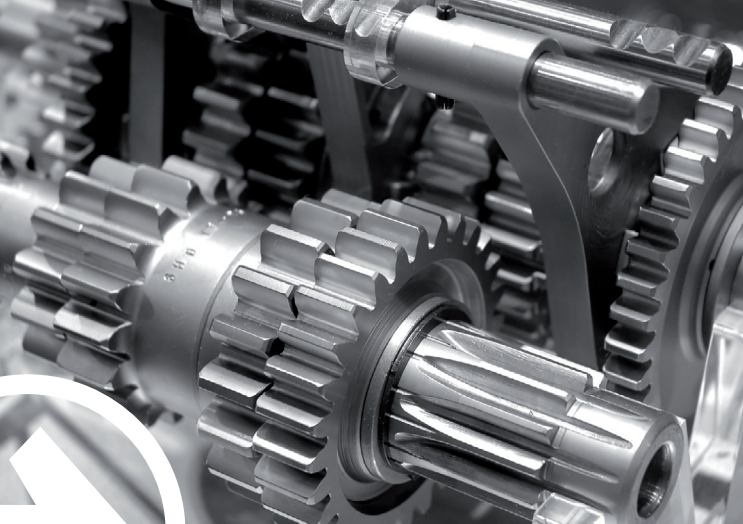
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INTRODUCTION

“Since the Treaty of Rome, free competition in European trade has been regulated by European and national laws.

National enforcement authorities, the national courts and the European Commission are all responsible for ensuring that the rules are applied.

New European Regulations, which can have an impact on your business, have come into force recently¹.

That is why UEIL, which is the independent umbrella association for the European lubricants industry, has decided to publish this leaflet in order to answer questions which you may ask regarding aspects of the legal framework relating to the purchase and use of lubricants and other functional fluids”

FAQ

➔ 1) Can the Vehicle Manufacturer impose, for its vehicles, the use of its own lubricants and other fluids or those of a named lubricant manufacturer?

No, except when the Vehicle Manufacturer is paying for the products (e.g. free servicing, recall work).

➔ 2) Can the Vehicle Manufacturer recommend, for its vehicles, the use of its own lubricants and other fluids or those of a named lubricant manufacturer?

Yes, simple recommendations are allowed, but they cannot be made mandatory. The Vehicle Manufacturer can only impose minimum quality and performance levels (API, ACEA, Manufacturer standard ...).

➔ 3) Is it true that the warranty would be inapplicable if the Vehicle Manufacturer recommendation is not followed?

No, the Vehicle Manufacturer cannot withdraw its warranty if lubricants and other functional fluids used meet the Vehicle Manufacturer requirements regarding quality and technical performance. The European Commission will not hesitate to initiate proceedings if a vehicle manufacturer would threaten not to honour its warranty because of the use of a product of matching quality.

➔ 4) How can I obtain technical requirements about lubricants and other functional fluids?

Vehicle Manufacturers have to provide all technical information, including technical specifications on lubricants and other functional fluids, to whoever services or uses these products to enable correct application.

➔ 5) Can I, as customer, choose the lubricant of my choice as long as it meets the Vehicle Manufacturer specifications?

Yes, you are free to choose the brand of your choice as long as it meets the technical requirements of the Vehicle Manufacturer.

➔ 6) I have a contract with a vehicle manufacturer. What about a non-compete obligation in the contract regarding lubricants or other functional fluids?

You have to be aware that a non-compete obligation agreed between you and a Vehicle Manufacturer (VM) regarding lubricants or other functional fluids would fall inside the scope of the European Regulation provisions on vertical restraints (article 101 TFEU) because of the important market share of the VM on the aftermarket sector, (more than 30%).

In some circumstances, minimum purchasing obligations calculated on the basis of your total annual requirements may also fall inside the scope of this Regulation.

➔ 7) What about fixed price maintenance package offers, including lubricants, which I may be asked to handle?

First, the Vehicle Manufacturer cannot dictate your selling price. It would be severely punished under European Competition Regulation.

Secondly, if maintenance package offers include specified lubricants and prevent you to buy competitive products, they would be interpreted as a non-compete obligation (see § n°6).

¹ Regulations 461/2010, 330/2010, 715/2007, 595/2009