

➔ **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 analysed 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 Manufacturer technical requirements and can cause a failure of the vehicle.

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 fined heavily 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:



**Bundesverband
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PURCHASE AND USE OF LUBRICANTS WITHIN THE EUROPEAN UNION

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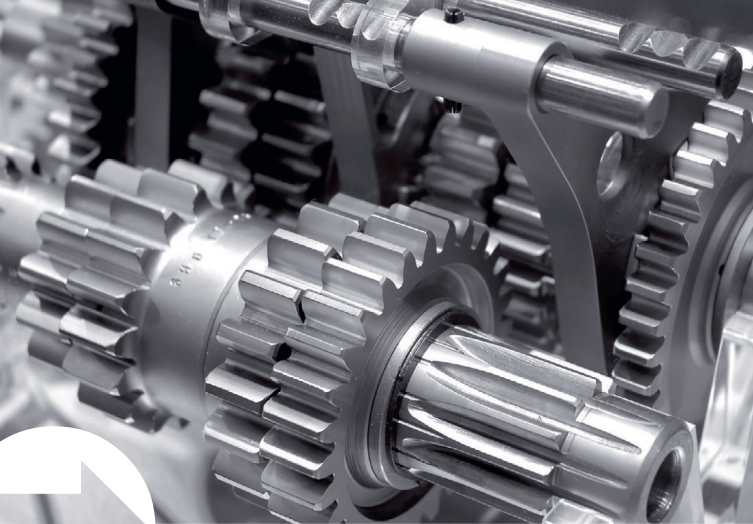
UEIL (the Union of the European Lubricants Industry) represents the interests of the lubricants industry in Europe that produces lubricants and metal processing fluids essential for the automotive and industrial sectors.

UNION OF THE EUROPEAN LUBRICANT INDUSTRY

UNION EUROPEENNE DE L'INDUSTRIE DES LUBRIFIANTS

Rue d'Arlon 40 | B-1000 Brüssel | Belgien
secretariat@ueil.org | www.ueil.org





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. European Regulations, which can have an impact on your business, have been updated recently.

That is why UEIL, as the umbrella association for the European lubricants industry, has decided to publish this leaflet 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). When customers pay for the servicing, the Vehicle Manufacturer cannot impose the use of a named product.

➔ 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 refer to quality and performance levels linked to a market standard or technical specifications, such as those of API, ACEA or the Manufacturer standard.

➔ 3) Is it true that the warranty would be inapplicable if the Vehicle Manufacturer recommendation is not followed and a product of matching quality is used?

No, the Vehicle Manufacturer cannot withdraw its warranty if lubricants and other functional fluids used are of matching quality. The European Commission will not hesitate to initiate proceedings if a vehicle manufacturer would threaten to do so. If a Vehicle Manufacturer refuses to honour a warranty claim because of the use of a product, it has to prove this product is causally linked to the failure (technical expertise required).

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

Vehicle Manufacturers have to provide in a readily accessible and prompt manner all technical information, so called Repair and Maintenance Information or RMI, including technical specifications on lubricants and other functional fluids, to any person who is directly involved in the repair and maintenance of vehicles. Withholding such information may amount to an abuse of a dominant position (article 102 TFEU).

Services handbooks have to include technical specifications references regarding fluids including on lubricants, brake fluids and cooling liquids.

➔ 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 must 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 based on 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 or its network cannot dictate your selling price to the final customer. It would be severely punished under European Competition Regulation.

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

➔ 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, owners and those who service and maintain vehicles.