Union of the European Lubricants Industry
Union Européenne de l'Industrie des Lubrifiants

POSITION PAPER

Evaluation of Regulation (EU) 2018/858

Genuine, fair and timely access to vehicle repair and maintenance information is vital for a healthy automotive aftermarket

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UEIL, representing the whole lubricants value chain in Europe, strongly supports Regulation (EU) 2018/858 of the European Parliament and of the Council of 30 May 2018 and specifically Chapter XIV relating to access to vehicle OBD information and vehicle repair and maintenance information (RMI).

Fair and timely access to vehicle repair and maintenance information is essential to competition in the automotive aftermarket. Regulation (EU) 2018/858 recognises that independent operators, such as independent lubricant manufacturers, are entitled to this information. These manufacturers, mostly SMEs, require reliable and timely access to compete effectively.

Regulation (EU) 2018/858 acknowledges the importance of access to RMI for a well-functioning internal market and for effective competition in the automotive sector. Chapter XIV of this Regulation explicitly requires manufacturers to provide independent operators with unrestricted, standardised, and non-discriminatory access to repair and maintenance information.

On several occasions, the European Commission confirmed that technical specifications of the fluids to be produced and used for the maintenance of a vehicle (including lubricants, coolants, brake fluids, etc) fall under the scope of the definition of vehicle repair and maintenance information. Hence, the right for independent operators to obtain access to RMI includes access to information on technical specifications of lubricants, coolants, brake fluids etc.

Despite these clarifications and the unequivocal provisions set forth in Regulation (EU) 2018/858, UEIL members continue to face systemic, persistent, and unjustified barriers to accessing RMI in the EU market. In practice, vehicle manufacturers often fail to respond to requests to access RMI within reasonable timeframes, provide incomplete or outdated information or totally refuse access to lubricants specifications. These barriers undermine competition, distort the aftermarket, and directly harm SMEs and consumers.

These practices are often not isolated incidents. In a number of cases, UEIL and its members have observed repeated instances of non-compliance by the same OEMs, indicating a broader pattern of behaviour.

Moreover, the national Type Approval Authorities to which complaints have been filed are reluctant to effectively enforce these provisions and unwilling to take appropriate actions or sanctions against the OEMs concerned, notwithstanding the clarifications given by the European Commission.

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Despite the instances of non-compliance experienced by UEIL and its members, no Member State has reported any infringements of Regulation (EU) 2018/858, notwithstanding the applicable reporting obligations. This apparent discrepancy reinforces concerns that infringements are not being adequately investigated and enforced at national level.

These barriers and the lack of enforcement distort the aftermarket and undermine the level playing field intended by Regulation (EU) 2018/858. Without OEM specifications, independent lubricant producers and other fluids manufacturers cannot develop compliant products, face delays in product development and market entry, and incur additional costs from repeated requests and incomplete information. Meanwhile, OEMs retain exclusive access to technical data, can promote proprietary lubricants, and consequently restrict aftermarket competition. Consumers consequently face higher repair and maintenance costs, less choice of lubricants and service providers, and potential safety and environmental risks where access to essential maintenance information is restricted.

UEIL therefore calls on the European Commission to strengthen the requirements addressing the key challenges to the lubricants industry and to take corrective action to ensure that Member States fully implement Regulation (EU) 2018/858.

➢ The importance of proper and timely access to technical information for independent operators

To ensure effective competition in the automotive aftermarket, it is crucial that dealers, repairers, and consumers can choose between different products. For fluids such as lubricants, access to the relevant technical specifications from the motor vehicle manufacturers is an essential prerequisite for independent operators seeking to assess, formulate, and validate potential competing products.

Our members constantly have to deal with anti-competitive behaviour regarding access to RMI, which *de facto* leads to market foreclosure for independent lubricants manufacturers, causing a decline in their market position and harming businesses and consumers.

Annex X of Regulation (EU) 2018/858 should then clearly state, as it does for OBD systems and diagnostic tools, that the manufacturer shall make available to interested parties the technical specifications they require for fluids to be used in their equipment.

We ask that:

- **The following point 2.6.4 is added to Annex X:** ***Full relevant information regarding technical functional requirements of fluids as specifications of the manufacturer to enable the development of fluids meeting the manufacturer's specifications, including on lubricants, brake fluids and cooling liquids. These data contain in particular the physicochemical characteristics and the performances requested, including units of measure and limits of acceptability.***

- **The following new point 2.9 is inserted in Annex X:** ***For the purpose of point 2.6.4, the development of fluids meeting the manufacturer's specifications shall not be restricted by any of the following:***

    - ***the unavailability of pertinent information,***

- ***the unavailability of tests included in technical specifications and/or of the fail or pass criteria of these tests,***
- ***the impossibility to have access in a timely manner to laboratories or service suppliers designated by the manufacturer to run required tests.***

➢ The importance of full implementation of the provisions of Regulation (EU) 2018/858 on access to RMI by Member States

UEIL and some of its members have filed several complaints to national Type Approval Authorities based on the failure of some vehicle manufacturers to comply with their obligation regarding access to vehicle repair and maintenance information according to Chapter XIV of Regulation (EU) 2018/858.[1]

In these instances, UEIL observes that the relevant national Type Approval Authorities:

- Fail to carry out an audit in order to verify compliance by the manufacturer within three months of the request as required by Article 65(3) of Regulation 2018/858.
- Take positions that are not in line with the Regulation and the explanations provided by the European Commission (notably during the Forum of 16 February 2023).
- Are reluctant to take any appropriate action or impose penalties against OEMs which clearly breach their obligations regarding access to RMI.

In general, UEIL notes that several Member States have failed to adopt national measures necessary to ensure the effective application of the penalties provided for in Article 84 of Regulation (EU) 2018/858.[2]

In the absence of a system of penalties in the Member States concerned, the obligations laid down in Chapter XIV of the Regulation are effectively devoid of any enforcement mechanism. This entails that a refusal or delay in granting access to vehicle repair and maintenance information does not expose the manufacturer to any penalty, thereby undermining the deterrent function required by Article 84 and causing serious and tangible harm, including to the independent operators, whose ability to operate in the market on equal terms depends on access to such information.

For these reasons, we ask the European Commission to:

- **send to the national Type Approval Authorities and the Member States concerned a letter of formal notice about their failure to implement the provisions of Regulation (EU) 2018/858 on access to RMI.**
- **consider starting infringement procedures as provided for in Article 258 TFEU if the above Type Approval Authorities and Member States still do not comply with Regulation (EU) 2018/858 despite the previous letter.**

[1] Complaints have been filed to the Type Approval Authorities in the following Member States: Belgium, France, Italy, the Netherlands and Sweden. UEIL is available to provide more detailed information on each of these cases.

[2] Article 84 of Regulation (EU) 2018/858 states that: *Member States shall lay down the rules on the penalties applicable to infringements by economic operators, independent operators, and technical services of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided shall be effective, proportionate and dissuasive*. The same article identifies, among the infringements subject to penalties, those relating to the obligations laid down in the Regulation concerning access to information (see paragraph 3(a)).

- **send to all the non-compliant Member States a letter of formal notice requesting them to notify without delay their system of penalties to sanction the breaches as stated in Article 84 of Regulation (EU) 2018/858.**
- **draw up detailed guidelines for Member States to remind them of the applicable rules regarding access to RMI and of the importance of enforcing them properly.**