



Possible unintended application of the EMCS system to lubricant additives under CN 3811 creates an unnecessary and costly burden for the lubricant industry

UEIL is the independent, umbrella association for the European lubricants industry, representing more than 400 predominantly small and medium-sized companies who account for 30% of the automotive oil market share (and a higher proportion of specialised industrial lubricants) and manufacture and distribute lubricant products throughout the European Union. The lubricant industry employs more than 100 000 people in Europe and produces a turnover of approximately €30bn.

UEIL hopes that EU Member States will address the issue of the possible unintended application of the EMCS system to lubricant additives in the Excise Duties Committee of the European Commission during its meeting planned for October 20th, clearly excluding lubricant additives from the scope of the EMCS. Following the Commission's Implementing Decision of September 16th, all additives under CN 3811 could become subject to the Control and Movement provisions on the basis of Directive 2003/98/EC even if a large part of the substances under this CN category are not at all subject to excise duties. This Directive explicitly excludes energy products not used for purposes of heating fuel or motor fuel from the scope of the Directive.

The issue follows from a recent ECJ decision which clarifies that fuel additives are to be considered as excise duty products. Consequently a process was started under Directive 2003/96 to bring (fuel) additives under the Control and Movement provisions/EMCS. However, instead of adding the relevant CN categories [only CN 3811 11 and CN 3811 19 refer to fuel additives (anti-knock preparations)], the Decision seems to include all substances under CN 3811, so also the lubricant additives (not used in fuel!) in CN 3911 21, CN 3811 29 and CN 3811 90 19 - products not used for fuel and/or heating purposes!

It would be a waste of resources if the Control and Movement provisions would also apply to lubricant additives as these products are only used in lubricants and there is no excise duty on these products. Therefore there is no reason to apply the EMCS as these additives will under no circumstances be used for other purposes than as lubricant additives (they are simply too expensive as specialty products and also have very different technical characteristics, which make them unsuitable to add to motor or heating fuels). The cost to implement the EMCS for the movement of lubricant additives would be substantial and completely unwarranted as almost all lubricant manufacturers in the EU are currently not using EMCS at all for any of their products/raw materials. Especially as in the end there is no excise duty on any of the lubricant additives the application of the EMCS to these lubricant additives would be completely out of proportion.

UEIL estimates that each lubricant producer would have to bear the costs of ½ person extra cost up to 1-1½ people for more complicated larger additive suppliers and blenders. As it affects all lubricant additives that a blender uses or an additive supplier sells it will require significant time and money investment as the activity is very methodical, even with its output being uploaded largely via a web driven system.

The costs of an average of one extra operative for EMCS of around 45k per year per company, would translate to a cost of around 4.5 Mn euro for lubricants producers in one EU country alone (e.g. the UK with around 100 producers, mostly SME's). EU-wide, with at least 1000 lubricant companies, this could mean an **additional yearly cost to the sector of around 45 Mn Euro** for no particular reason.



On top of the yearly cost, a one-off investment in adaptations of planning and inventory management software systems of up to 50k per producer will be required, this would translate to an **additional 50 Mn Euro of cost for the SME's to bear in 2012**. As most lubricant producers are SME's, these additional costs will hit hard on the profitability especially in the current economic climate.

Moreover many lubricant producers in the EU export up to 80-85% of their production, the majority of it outside the EU. Therefore the cost of employing an extra person to comply with the EMCS adds a significant amount to the cost base, harming our international competitiveness in non-EU markets.

Furthermore the "opportunity cost" of compliance with these regulations is also significant as existing staff will have to deal with more administrative burden linked to the EMCS, time that should be allocated to increasing sales or research or production, i.e. value creation. As the additives will be zero rated there is not even a tax upside for the EU governments and thus administrative burden and the opportunity costs for the Customs authorities in the EU member states will also be unfavourably impacted.

Given the fact that lubricant additives are not used for purposes of heating fuel or motor fuel, they should remain outside of the scope of the EMCS. However given the confusion on this issue, **UEIL hopes that the European Commission and the EU Member States, will review and amend the Implementing Decision of September 16th and issue guidance among the EU member states on how the Decision should be implemented (i.e. excluding lubricant additives) in the interim. Also when discussing the exact implementation of the Decision in the Excise Duties Committee (by adding the relevant CN codes to the EMCS technical specs), to limit this to CN 3811 11 and CN 3811 19.**

At the same time it is of fundamental importance that EU legislation regarding excise tax on lubricants or lubricants additives is uniformly applied in all EU countries to safeguard a level playing field for all competitors.

Given that the measure is scheduled to enter into effect as of July of 2012, it would be very **helpful if guidance on this matter can be issued to all EU member states as soon as possible** in advance of any decisions on (unnecessary) investments by the lubricants producers.

UEIL would be grateful if you would be willing to raise the issue during the meeting of the 20th of October in order to review, clarify and/or amend the Commission's Implementing Decision of September 16th. We are of course available by phone and e-mail to answer any further question you may still have.

On behalf of UEIL,

A handwritten signature in black ink, appearing to read 'Milagros Mostaza', is written over a horizontal line.

Milagros Mostaza
Secretary General