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2020/0020 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the relevant Committees of the United Nations Economic Commission for Europe as regards the proposals for modifications to UN Regulations Nos. 10, 26, 28, 46, 48, 51, 55, 58, 59, 62, 79, 90, 106, 107, 110, 117, 121, 122, 128, 144, 148, 149, 150, 151 and 152, as regards the proposals for modifications to Global Technical Regulations (GTR) Nos. 3, 6 and 16, as regards the proposal for amendments to Consolidated Resolution R.E.5, and as regards the proposals for authorisations to develop an amendment to GTR No. 6 and to develop a new GTR on the Determination of Electrified Vehicle Power (DEVP)

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns a decision establishing the position to be taken on the Union's behalf in one of a permanent working parties in the institutional framework of the United Nations, namely in the World Forum for Harmonisation of Vehicle Regulations of the United Nations Economic Commission for Europe (Working Party 29 or WP.29), in connection with the envisaged adoption by this working party of modifications to existing UN Regulations (under the Revised 1958 Agreement) or UN Global Technical Regulations (UN GTRs under the Parallel Agreement) and one resolution under the Revised 1958 Agreement.

2. CONTEXT OF THE PROPOSAL

2.1. The 1958 Agreement and the 1998 Agreement

The Agreement of the United Nations Economic Commission for Europe ("UNECE") concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted to and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions ("Revised 1958 Agreement") and the Agreement concerning the establishing of Global Technical Regulations for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles ("Parallel Agreement") aim to develop harmonised requirements intended to remove technical barriers to the trade in motor vehicles between the UNECE Contracting Parties and to ensure that such vehicles offer a high level of safety and environmental protection. The Agreements entered into force for the EU on 24 March 1998 and 15 February 2000 respectively. They are both administered by the UNECE World Forum for Harmonisation of Vehicle Regulations (Working Party 29 or WP.29).

The European Union is a party to these Agreements¹.

2.2. The World Forum for Harmonisation of Vehicle Regulations of the United Nations Economic Commission for Europe (UNECE) – Working Party 29 or WP. 29

WP.29 offers a unique framework for globally harmonized regulations on vehicles. WP.29 is a permanent working party in the institutional framework of the United Nations with a specific mandate and rules of procedure. It works as a global forum allowing open discussions on motor vehicle regulations and where the implementation of the Revised 1958 Agreement and the Parallel Agreement is being discussed. Any member country of the United Nations and any regional economic integration organization, set up by country members of the United

¹ Council Decision 97/836/EC of 27 November 1997 with a view to accession by the European Community to the Agreement of the United Nations Economic Commission for Europe concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted to and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions ('Revised 1958 Agreement') (OJ L 346, 17.12.1997, p. 78). Council Decision 2000/125/EC of 31 January 2000 concerning the conclusion of the Agreement concerning the establishing of global technical regulations for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles ('Parallel Agreement') (OJ L 35, 10.2.2000, p. 12).

Nations, may fully participate in the activities of WP.29 and may become a contracting party to the Agreements on vehicles administered by WP.29.

The meetings of UNECE WP.29 are held three times a year, i.e. in March, June and November. In each meeting session new UN Regulations, new UN Global Technical Regulations (UN GTRs), modifications to existing UN Regulations and Resolutions under the Revised 1958 Agreement and modifications to existing UN GTRs and Resolutions under the Parallel Agreement may be adopted in order to allow for technical progress. Prior to each WP.29 meeting these modifications are first discussed at technical level in dedicated subsidiary bodies of WP.29.

Subsequently, a vote takes place at WP.29 level (i.e. by a qualified majority of the Contracting Parties present and voting for the proposals under the Revised 1958 Agreement and by a consensus vote of the Contracting Parties present and voting for the proposals under the Parallel Agreement).

The position to be taken on behalf of the Union on the new Regulations and GTRs, their amendments, supplements and corrigenda, is established ahead of each WP.29 by a Council Decision under Article 218 (9) TFEU.

2.3. The envisaged act of WP.29

Between 10 and 12 March 2020, during its 180th session, WP.29 may adopt the proposals for modifications to UN Regulations Nos 10, 26, 28, 46, 48, 51, 55, 58, 59, 62, 79, 90, 106, 107, 110, 117, 121, 122, 128, 144, 148, 149, 150, 151 and 152, the proposals for modifications to Global Technical Regulations (GTR) Nos. 3, 6 and 16, the proposal for amendments to Consolidated Resolution R.E.5, and the proposals for authorisations to develop an amendment to GTR No. 6 and to develop a new GTR on the Determination of Electrified Vehicle Power (DEVP);

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The WP.29 system strengthens international harmonization of vehicle standards. The 1958 Agreement plays a key role in this objective since EU manufacturers can operate to a common set of type approval Regulations in the knowledge that the product will be recognized by the Contracting Parties as being in conformity with its national legislation. This scheme, for instance, has allowed for Regulation (EC) No 661/2009 on the general safety of motor vehicles to repeal more than 50 EU Directives and replace them with the corresponding Regulations developed under the 1958 Agreement.

A similar approach has been taken with Directive 2007/46/EC, which has replaced the approval systems of the Member States with a Union approval procedure and established a harmonised framework containing administrative provisions and general technical requirements for all new vehicles, systems, components and separate technical units. That Directive incorporated UN Regulations in the EU type-approval system, either as requirements for type-approval or as alternatives to Union legislation. Since the adoption of that Directive, UN Regulations have increasingly been incorporated into Union legislation in the framework of the EU type-approval.

Once the proposals for modifications to or new UN Regulations are adopted by WP.29, and once these acts are notified to the Contracting Parties by the Executive Secretary of UNECE, then after six months, in the absence of objections by the Contracting Parties constituting a

blocking minority, the acts may finally enter into force and may be transposed in the applicable national rules of each Contracting Party. In the EU, the transposition is completed following the publication of these acts in the Official Journal of the EU.

It is, hence, necessary to define the Union's position on:

- the proposals for modifications to UN Regulations Nos 10, 26, 28, 46, 48, 51, 55, 58, 59, 62, 79, 90, 106, 107, 110, 117, 121, 122, 128, 144, 148, 149, 150, 151 and 152;
- the proposals for modifications to Global Technical Regulations (GTR) Nos 3, 6 and 16;
- the proposal for amendments to Consolidated Resolution R.E.5 and;
- the proposals for authorisations to develop an amendment to GTR No. 6 and to develop a new GTR on the Determination of Electrified Vehicle Power (DEVP);

submitted for vote in the March 2020 WP.29 meeting that will take place from 10 to 12 March 2020.

The Union should support the above acts because they are fully in line with the Union's internal market policy as regards the automotive industry and are consistent with Union transport, climate and energy policies. These acts have a very positive impact on automotive EU competitiveness and international trade. The vote in favour of these acts will foster technological progress, offer advantages of economies of scale, prevent fragmentation of the internal market and ensure equal environmental and safety standards across the Union.

External expertise is not relevant in the case of this proposal. It will however be reviewed by the Technical Committee on Motor Vehicles.

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) provides for decisions establishing 'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'

The concept of 'acts having legal effects' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'.²

4.1.2. Application to the present case

WP.29 is a body where the implementation of the Revised 1958 Agreement and the Parallel Agreement is being discussed between the UNECE Contracting Parties.

² Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

The acts which WP.29 is called upon to adopt constitute acts having legal effects.

The UN Regulations within the envisaged act will be binding on the Union and capable of decisively influencing the content of EU legislation in the field of vehicle type approval. Directive 2007/46/EC of the European Parliament and of the Council³ replaced the approval systems of the Member States with a Union approval procedure and established a harmonised framework containing administrative provisions and general technical requirements for all new vehicles, systems, components and separate technical units. That Directive incorporated regulations adopted under the Revised 1958 Agreement ('UN Regulations') in the EU type-approval system, either as requirements for type-approval or as alternatives to Union legislation. Since the adoption of Directive 2007/46/EC, UN regulations have been increasingly incorporated into Union legislation.

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged act relate to the approximation of laws. Therefore, the substantive legal basis of the proposed decision is Article 114 TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 114 TFEU, in conjunction with Article 218(9) TFEU.

³ Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).

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on the position to be taken on behalf of the European Union in the relevant Committees of the United Nations Economic Commission for Europe as regards the proposals for modifications to UN Regulations Nos. 10, 26, 28, 46, 48, 51, 55, 58, 59, 62, 79, 90, 106, 107, 110, 117, 121, 122, 128, 144, 148, 149, 150, 151 and 152, as regards the proposals for modifications to Global Technical Regulations (GTR) Nos. 3, 6 and 16, as regards the proposal for amendments to Consolidated Resolution R.E.5, and as regards the proposals for authorisations to develop an amendment to GTR No. 6 and to develop a new GTR on the Determination of Electrified Vehicle Power (DEVP)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By Council Decision 97/836/EC⁴, the Union acceded to the Agreement of the United Nations Economic Commission for Europe (UNECE) concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted to and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of those prescriptions ('Revised 1958 Agreement'). The Revised 1958 Agreement entered into force on 24 March 1998.
- (2) By Council Decision 2000/125/EC⁵, the Union acceded to the Agreement concerning the establishing of global technical regulations for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles ('Parallel Agreement'). The Parallel Agreement entered into force on 15 February 2000.
- (3) Pursuant to Article 1 of the Revised 1958 Agreement and Article 6 of the Parallel Agreement, the UNECE World Forum for Harmonisation of Vehicle Regulations (Working Party 29 or WP.29) may adopt, as applicable, the proposals for modifications to UN Regulations Nos 10, 26, 28, 46, 48, 51, 55, 58, 59, 62, 79, 90, 106, 107, 110, 117, 121, 122, 128, 144, 148, 149, 150, 151 and 152, the proposals for modifications to Global Technical Regulations (GTR) Nos. 3, 6 and 16, the proposal

⁴ Council Decision 97/836/EC of 27 November 1997 with a view to accession by the European Community to the Agreement of the United Nations Economic Commission for Europe concerning the adoption of uniform technical prescriptions for wheeled vehicles, equipment and parts which can be fitted to and/or be used on wheeled vehicles and the conditions for reciprocal recognition of approvals granted on the basis of these prescriptions ('Revised 1958 Agreement') (OJ L 346, 17.12.1997, p. 78).

⁵ Council Decision 2000/125/EC of 31 January 2000 concerning the conclusion of the Agreement concerning the establishing of global technical regulations for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles ('Parallel Agreement') (OJ L 35, 10.2.2000, p. 12).

for amendments to Consolidated Resolution R.E.5, and the proposals for authorisations to develop an amendment to GTR No. 6 and to develop a new GTR on the Determination of Electrified Vehicle Power (DEVVP).

- (4) WP.29, during the 180th session of the World Forum to be held between 10 and 12 March 2020, is to adopt the above acts in relation to the administrative provisions and uniform technical prescriptions for the approval of and global technical regulations for wheeled vehicles, equipment and parts, which can be fitted and/or be used on wheeled vehicles.
- (5) It is appropriate to establish the position to be taken on the Union's behalf in WP.29 as regards the adoption of proposals for UN Regulations, as the UN Regulations will be binding on the Union and capable of decisively influencing the content of Union law in the field of vehicle type-approval.
- (6) Directive 2007/46/EC of the European Parliament and of the Council⁶ replaced the approval systems of the Member States with a Union approval procedure and established a harmonised framework containing administrative provisions and general technical requirements for all new vehicles, systems, components and separate technical units. That Directive incorporated regulations adopted under the Revised 1958 Agreement ('UN Regulations') in the EU type-approval system, either as requirements for type-approval or as alternatives to Union legislation. Since the adoption of Directive 2007/46/EC, UN regulations have been increasingly incorporated into Union legislation.
- (7) In the light of experience and technical developments, the requirements relating to certain elements or features covered by UN Regulations Nos 10, 26, 28, 46, 48, 51, 55, 58, 59, 62, 79, 90, 106, 107, 110, 117, 121, 122, 128, 144, 148, 149, 150, 151 and 152 need to be amended or supplemented. In addition, certain provisions in UN Global Technical Regulations (GTR) Nos 3, 6 and 16 need to be modified. Finally, the amendments to Consolidated Resolution R.E.5 and the authorisations to develop an amendment to GTR No. 6 and to develop a new GTR on the Determination of Electrified Vehicle Power (DEVVP) need to be adopted.
- (8) WP.29 working document ECE/TRANS/WP.29/2020/25 concerns a proposal for Supplement 2 to the UN Regulation No. 144 (Accident Emergency Call Systems), which is not ready for a vote in WP.29.
- (9) WP.29 working document ECE/TRANS/WP.29/2020/2 concerns a proposal for Supplement 1 to the 08 series of amendments to UN Regulation No. 9 (Noise of three-wheeled vehicles). Given that the EU is not applying the uniform provisions of UN Regulation 9, it is not necessary to establish a position of the Union on proposal ECE/TRANS/WP.29/2020/2.

⁶ Directive 2007/46/EC of the European Parliament and of the Council of 5 September 2007 establishing a framework for the approval of motor vehicles and their trailers, and of systems, components and separate technical units intended for such vehicles (Framework Directive) (OJ L 263, 9.10.2007, p. 1).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in WP.29 during its 180th session to be held between 10 and 12 March 2020 shall be to vote in favour of the proposals listed in the Annex to this Decision.

Article 2

The position to be taken on the Union's behalf in WP.29 during its 180th session to be held between 10 and 12 March 2020 shall be to vote against the proposal for Supplement 2 to the UN Regulation No. 144 (Accident Emergency Call Systems, working document ECE/TRANS/WP.29/2020/25).

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council
The President*