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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2020) 216 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union in the World Forum for Harmonisation of Vehicle Regulations of the United Nations Economic Commission for Europe as regards the proposals for modifications to UN Regulations Nos 13, 14, 16, 22, 30, 41, 78, 79, 83, 94, 95, 101, 108, 109, 117, 129, 137, 138, 140 and 152, as regards the proposals for modifications to Global Technical Regulations Nos 3, 6, 7, 16 and 19, as regards the proposal for amendments to Consolidated Resolution R.E.3. and as regards the proposals for five new UN Regulations in relation to safety, emissions and automation in the area of motor vehicles

Delegations will find attached the final version of the Council decision for the upcoming UNECE WP.29 meeting on 23 June 2020.

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EUROPEAN
COMMISSION

Brussels, 20.5.2020
COM(2020) 216 final

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the World Forum for Harmonisation of Vehicle Regulations of the United Nations Economic Commission for Europe as regards the proposals for modifications to UN Regulations Nos 13, 14, 16, 22, 30, 41, 78, 79, 83, 94, 95, 101, 108, 109, 117, 129, 137, 138, 140 and 152, as regards the proposals for modifications to Global Technical Regulations Nos 3, 6, 7, 16 and 19, as regards the proposal for amendments to Consolidated Resolution R.E.3. and as regards the proposals for five new UN Regulations in relation to safety, emissions and automation in the area of motor vehicles

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 new UN Regulations and modifications to existing UN Regulations (under the Revised 1958 Agreement), 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).

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 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 European Union is a party to these Agreements[1].

[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

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

On 23 June 2020, during its 181st session, WP.29 may adopt the proposals for modifications to UN Regulations Nos 13, 14, 16, 22, 30, 41, 42, 44, 78, 79, 83, 93, 94, 95, 101, 108, 109, 117, 129, 137, 138, 140 and 152, the proposal to new UN Regulation concerning the approval of vehicles with regard to fuel system integrity and safety of electric power train in the event of a rear-end collision, the proposal and the modification for a new UN Regulation on Worldwide harmonized Light vehicles Test, the proposal for a new UN Regulation on uniform provisions concerning the approval of vehicles with regards to cyber security and cyber security management system, the proposal for a new UN Regulation on uniform provisions concerning the approval of vehicles with regards to software update and software update management system, the proposal for a new UN Regulation on uniform provisions concerning the approval of vehicles with regards to Automated Lane Keeping System, the proposals for modifications to Global Technical Regulations (UN GTR) Nos 3, 6, 7, 16 and 19, and the proposal for amendments to Consolidated Resolution on the Construction of Vehicles R.E.3.

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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

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which can be fitted and/or be used on wheeled vehicles ('Parallel Agreement') (OJ L 35, 10.2.2000, p. 12).

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 following acts:

– the proposals for modifications to UN Regulations Nos 13, 14, 16, 22, 30, 41, 78, 79, 83, 94, 95, 101, 108, 109, 117, 129, 137, 138, 140 and 152;

– the proposal to new UN Regulation concerning the approval of vehicles with regard to fuel system integrity and safety of electric power train in the event of a rear-end collision;

– the proposal and the modification for a new UN Regulation on Worldwide harmonized Light vehicles Test;

– the proposal for a new UN Regulation on uniform provisions concerning the approval of vehicles with regards to cyber security and cyber security management system;

– the proposal for a new UN Regulation on uniform provisions concerning the approval of vehicles with regards to software update and software update management system;

– the proposal for a new UN Regulation on uniform provisions concerning the approval of vehicles with regards to Automated Lane Keeping System;

– the proposals for modifications to Global Technical Regulations (UN GTR) Nos 3, 6, 7, 16 and 19;

– the proposal for amendments to Consolidated Resolution on the Construction of Vehicles R.E.3;

submitted for vote in the June 2020 WP.29 meeting that will take place on 23 June 2020. In addition, it is necessary to define the Union's position on:

– the proposals for authorisations to develop an amendment to UN GTR No 8 and to develop a new UN GTR on in-vehicle battery durability and;

– the request for the extension of the mandate for UN GTR No 9 (on pedestrian safety).

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.

In contrast, given the Union is not applying the uniform provisions of UN Regulation No 42, it is not necessary to establish a position of the Union on the proposal for amendments to UN Regulation No 42 under consideration by UNECE WP.29.

The proposals for amendments to UN Regulation No 44[2] (Child restraint systems) and UN Regulation No 93[3] (Front underrun protective devices) are not ready for a vote in the June 2020 WP.29 meeting and will be further discussed in the dedicated subsidiary bodies of UNECE WP.29.

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'.[4]

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.

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 together with UN GTRs and Resolutions 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 Council[5] 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

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2 Proposal for Supplement 18 to the 04 series of amendments to UN Regulation No. 44 (Child restraint systems).

3 Proposal for Supplement 1 to the original version of UN Regulation No. 93 (Front underrun protective devices).

4 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.

5 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).

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.

2020/0092 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union in the World Forum for Harmonisation of Vehicle Regulations of the United Nations Economic Commission for Europe as regards the proposals for modifications to UN Regulations Nos 13, 14, 16, 22, 30, 41, 78, 79, 83, 94, 95, 101, 108, 109, 117, 129, 137, 138, 140 and 152, as regards the proposals for modifications to Global Technical Regulations Nos 3, 6, 7, 16 and 19, as regards the proposal for amendments to Consolidated Resolution R.E.3. and as regards the proposals for five new UN Regulations in relation to safety, emissions and automation in the area of motor vehicles

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/EC[1], 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/EC[2], 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) Directive 2007/46/EC of the European Parliament and of the Council[3] replaced the approval systems of the Member States with a Union approval procedure and established a harmonised framework containing administrative provisions and general

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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).

2 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).

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).

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 increasingly been incorporated into Union legislation.

(4) 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 (UNECE WP.29) may adopt proposals for modifications to UN Regulations, UN Global Technical Regulations (UN GTRs) and UN Resolutions as well as proposals for new UN Regulations, UN GTRs and UN Resolutions concerning the approval of vehicles. Moreover, pursuant to those provisions, UNECE WP.29 may adopt proposals for authorisations to develop amendments to UN GTRs or to develop amendments to UN GTRs and may adopt proposals for the extension of mandates for UN GTRs.

(5) UNECE WP.29, during the 181st session of the World Forum to be held on 23 June 2020, may adopt the proposals for modifications to UN Regulations Nos 13, 14, 16, 22, 30, 41, 78, 79, 83, 94, 95, 101, 108, 109, 117, 129, 137, 138, 140 and 152, the proposal for a new UN Regulation concerning the approval of vehicles with regard to fuel system integrity and safety of electric power train in the event of a rear-end collision, the proposal for a new UN Regulation on Worldwide harmonized Light vehicles Test and a modification to that UN Regulation, the proposal for a new UN Regulation on uniform provisions concerning the approval of vehicles with regards to cyber security and cyber security management system, the proposal for a new UN Regulation on uniform provisions concerning the approval of vehicles with regards to software update and software update management system, the proposal for a new UN Regulation on uniform provisions concerning the approval of vehicles with regards to Automated Lane Keeping System, the proposals for modifications to UN GTRs Nos 3, 6, 7, 16 and 19, and the proposal for amendments to Consolidated Resolution R.E.3. on the Construction of Vehicles. Moreover, UNECE WP.29 is to adopt the proposal for the extension of the mandate for UN GTR 9 and the proposal for authorisations to develop an amendment to UN GTR No 8 and to develop a new UN GTR on in-vehicle battery durability.

(6) It is appropriate to establish the position to be taken on the Union's behalf in UNECE WP.29, as regards the adoption of those proposals, as the UN Regulations will be binding on the Union and, together with the UN GTRs and the Consolidated Resolution, capable of decisively influencing the content of Union law in the field of vehicle type-approval.

(7) In the light of experience and technical developments, the requirements relating to certain elements or features covered by UN Regulations Nos 14, 16, 22, 30, 41, 78, 79, 83, 94, 95, 101, 108, 109, 117, 129, 137, 138, 140 and 152, as well as by Consolidated Resolution R.E.3., need to be amended or supplemented.

(8) In addition, certain provisions in UN GTRs Nos 3, 6, 7, 16 and 19 need to be amended.

(9) UN Regulation No 13 needs to be corrected, although the changes concern the Russian language version only.

(10) In order to allow for technical progress and in order to improve vehicle safety and testing of emissions, five new UN Regulations on fuel system integrity and safety of

electric power train in the event of a rear-end collision, on Worldwide harmonized Light vehicles Test, on cyber security and cyber security management system, on software update and software update management system and on Automated Lane Keeping System need to be adopted. In parallel, an amendment to the new UN Regulation with regard to Worldwide harmonized Light vehicles Test needs to be adopted, as this will separately permit a full mutual recognition for the Contracting Parties opting to apply new requirements going beyond the original 00 series of the Regulation, which covers regional requirements only

(11) In order to allow for further development of technical requirements, the proposals to extend the mandate for UN GTR No 9 and to authorise the development of an amendment to UN GTR No 8 and of a new UN GTR on in-vehicle battery durability need to be adopted based on the requests either by the UNECE Contracting Parties sponsoring the work on UN GTRs or by the dedicated subsidiary bodies of UNECE WP.29.

(12) On 27 February 2020, the Council adopted Decision (EU) 2020/287[4] on the position to be taken on UN GTRs Nos 3, 6 and 16 for the 180th session of UNECE WP.29, which was held between 10 and 12 March 2020. However, WP.29 was not in position to take a vote in that session and decided to resubmit the proposals for a vote at the June session.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the 181st session of the UNECE World Forum for Harmonisation of Vehicle Regulations to be held on 23 June 2020 shall be to vote in favour of the proposals listed in the Annex to this Decision.

Article 2

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President

[4] Council Decision (EU) 2020/287 of 27 February 2020 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 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.