

European Commission comments to ECE/TRANS/WP.29/GRRF/2011/27 (OICA/CLEPA request for exclusion of certain special vehicles from the scope of the draft Regulation(s) on AEBS, based on technico-economic reasons)

OICA and CLEPA jointly submitted working document ECE/TRANS/WP.29/GRRF/2011/27 with a view to exclude certain special vehicles from the scope of the draft Regulation(s) on AEBS based on technico-economic reasons. This request takes the form of a proposal for footnote to be added to the title of Annex 3 to the draft regulatory text proposals for the Regulation(s) on AEBS. This Annex 3 contains a table specifying the pass/fail criteria to be fulfilled for the type-approval of vehicles fitted with AEBS.

The European Commission is of the opinion that **it is not appropriate to propose exclusions for certain vehicles in the draft Regulation on AEBS** and this for the following reasons:

- 1) At its 64th session in September 2008, GRRF agreed - upon a proposal by its Chairman – to organise a brainstorming session in December 2008 to clarify a number of issues with a view to set up, possibly at the next GRRF session, a new informal group for developing new requirements on AEBS and LDWS. (ECE/TRANS/WP.29/GRRF/64 - points 55 +56).

The GRRF brainstorming session held on 9 December 2008 resulted into a number of conclusions, which were presented by its Chairman at the 65th session of GRRF in February 2009 (GRRF-65-19). **One of these conclusions was that the informal group had to prepare regulatory text proposals for GRRF within 2 years (mid 2011), without consideration of cost/benefit and legal issues.**

In view of this conclusion, the representative of the European Commission - in his capacity as chairman of the informal group on AEBS/LDWS - has consistently reminded the members of the IG not to embark on discussions relating to exemptions or exclusions based on cost/benefit considerations.

The joint proposal by OICA and CLEPA submitted to GRRF 70 seems to ignore the conclusion reached by GRRF 65 when it agreed on the setting up of an informal group on AEBS/LDWS.

- 2) In document ECE/TRANS/WP.29/2011/48 on the proposal for guidelines on the scope, administrative provisions and alternative requirements in Regulations annexed to the 1958 Agreement, prepared by the UNECE secretariat, it is specified in part III that the scope of a UNECE Regulation shall specify – if necessary – which vehicle categories, components, systems and parts are not covered by the Regulation.

The proposal by OICA and CLEPA to include exclusions by means of a footnote to an Annex of the draft Regulation(s) on AEBS does not respect this guidance provided in document ECE/TRANS/WP.29/2011/48.

Whilst the description of the scope of the draft regulation(s) on AEBS in § 1 specifies that they apply to the approval of vehicles of categories M₂, N₂, M₃ and N₃ with regard to an on-board system to mitigate a rear-end in lane collision, this scope in reality appears to be restricted and limited indirectly through the joint OICA/CLEPA submission proposing such limitation/restriction by means of a footnote in an Annex 3 to the draft AEBS Regulation(s). It is obvious that the lack of transparency and clarity in this proposal, if retained, will give rise to confusion, difference in interpretation and possible disputes concerning the effective scope of application of the Regulation(s) on AEBS.

- 3) In the justification for their request for exclusions, OICA and CLEPA explicitly acknowledge that they are well aware that proposing exemptions directly in the respective draft UNECE regulation(s) on AEBS "somewhat restraints the national sovereignty of the Contracting Parties".

Indeed, in document ECE/TRANS/WP.29/2011/48 on the proposal for guidelines on the scope, administrative provisions and alternative requirements in Regulations annexed to the 1958 Agreement, prepared by the UNECE secretariat, it is specified in part III that the choice to make the requirements of a Regulation mandatory on a national/regional basis is to be dealt nationally/regionally and shall therefore not be addressed within the scope of a UNECE Regulation.

It is exactly based on this important principle that the EU legislation on the general safety of motor vehicles (GSR), which mandates the installation of AEBS to vehicles of categories M₂, N₂, M₃ and N₃, specifies that possible exemptions to this AEBS installation requirement can only be made through implementing measures to be adopted by the European Commission, and this only when it can be demonstrated through cost/benefit considerations and

taking into account safety related aspects, that the installation of AEBS would not be appropriate for such vehicles.

The European Commission therefore cannot accept that its prerogative to propose exemptions from the AEBS installation requirements under the GSR, would entail the risk to be pre-empted by exclusions specified in the draft UNECE Regulation(s) on AEBS.

If such exclusions were nevertheless to be included in the draft UNECE Regulation(s) on AEBS, it would be impossible for the Commission to propose to the EU to adhere to and apply the UNECE Regulation(s) on AEBS in full, as the exclusions specified therein may not be justified in accordance with the conditions specified in the GSR.

- 4) OICA and CLEPA claim in their justification for their request to specify exclusions for special vehicles in the draft Regulation(s) on AEBS that in the absence of such exclusions in the draft Regulation(s) on AEBS, there would be a risk that exemptions decided by Contracting Parties may be un-harmonised. The European Commission is of the opinion that by proposing such exclusions in the draft UNECE Regulation(s) on AEBS will entail exactly the opposite and undesirable effect, since Contracting Parties would then have the freedom to impose their own national/regional requirements for the type-approval of those vehicles in relation to their AEBS equipment, as these vehicles would not be covered in the scope of the draft UNECE Regulation(s) on AEBS. Moreover, Contracting Parties applying the Regulation(s) on AEBS would not be bound by the mutual recognition principle of the AEBS Regulation(s) if these special vehicles, despite the fact of being excluded from the requirements of the AEBS Regulation(s), would be capable of complying with the requirements of the UNECE Regulation(s) on AEBS and could be type-approved accordingly.

For the reasons set out above, the European Commission is of the opinion that it is not appropriate to specify within the draft Regulation(s) on AEBS any exclusions or exemptions for special vehicles based on technico-economic reasons and invites GRRF members to carefully consider the possible negative consequences such exclusions may have with regard to the main principle of mutual recognition of type-approval certificates.
