

Note by the secretariat: the Working Party on Road Traffic Safety (WP.1) agreed to distribute the following informal proposal from the secretariat as an official document for the next WP.1 March 2008 session. In the mean time, the legal expert group of WP.1 will examine the text for its final revision.

Sleeper coaches in international Traffic

At the last session of WP.1 (July 2-6, 2007), the Secretary of WP.29 presented an informal document concerning safety on board coaches with sleeping berths. WP.1 was asked if the Vienna Convention on Road Traffic or the European Agreement supplementing it contained provisions which could apply to these coaches enabling to allow or refuse, at the international level, their traffic or the carriage of passengers in a lying position.

The WP.1, while reserving its position on the “safety” aspect of these coaches, specified that there is no provision in the Vienna Convention of 1968 or in the European Agreement supplementing it prohibiting or authorising the presence of sleeping berths on board coaches or the transport of passengers in a lying position. However, WP.1 did not come to a conclusion about the legal consequences related to the absence of such a provision regarding the possibility of admitting or not admitting these coaches in international traffic.

In order to facilitate the consideration of this question by WP.1, the secretariat has reviewed the provisions of the Vienna Convention and the European Agreement supplementing it which could apply and makes the following observations:

- The Vienna Convention, in accordance with its article 3, paragraph 3, requests the Contracting Parties to accept on their territory the vehicles which fulfil the technical conditions defined in Annex 5 of the Convention. (*Opinion of the secretariat: as Annex 5 does not contain any direct or indirect provision that could apply to coaches equipped with sleeping berths, these vehicles should be accepted in international traffic provided they are in conformity with the requirements of Annex 5*).

- In accordance with paragraph 2 a) of article 3 of the Convention, Contracting Parties may adopt rules not contained in Annex 5 provided these rules are in no way contrary to the safety principles governing the provisions of this Annex. (*Opinion of the secretariat: under the terms of this provision, countries may authorise equipment such as sleeping berths on board coaches given that this equipment is not contrary to any provision mentioned in Annex 5*).

- In accordance with paragraph 1 of Annex 5 of the Convention, any Contracting Party may, with respect to motor vehicles which it registers and to trailers which it allows on the road under its domestic legislation, lay down rules which supplement, or are stricter than, the provisions of Annex 5. All vehicles in international traffic must meet the technical requirements in force in their country of registration when they first entered into

service. (*Opinion of the secretariat: pursuant to this provision, a coach equipped with sleeping berths, approved as such and registered in a country, must be admitted in international traffic. This analysis is confirmed by the provision of article 3, paragraph 3: “they (the Contracting Parties) shall also be bound to recognize registration certificates issued in accordance with the provisions of Chapter III as prima facie evidence that the vehicles to which they refer fulfil the conditions laid down in the said Chapter III”*).

- Subparagraph d) of paragraph 59 of Annex 5 specifies that, "Motor vehicles and trailers shall, as far as possible, be so constructed and equipped as to reduce the danger to their occupants and to other road-users in case of accident." (*Opinion of the secretariat: This is a strong recommendation (as far as possible), but not an obligation, and cannot be used to oppose the admission of coaches with sleeping berths in international traffic which are not equipped, for example, with safety belts*).

- Annex 1, paragraph 3, of the Convention enables the Contracting Parties to refuse to admit to their territory in international traffic in particular articulated vehicles used for passenger transport, insofar as the use of such combinations is prohibited by their domestic legislation. (*Opinion of the secretariat: pursuant to this provision, the traffic of coaches with sleeping berths can be only prohibited at the international level if these coaches are articulated.*)

- In accordance with Annex 1, paragraph 4, the Contracting Parties may refuse to admit to their territories in international traffic motor vehicles and trailers which benefit the exemptions specified in paragraph 60 of Annex 5 of the Convention. (*Opinion of the secretariat: Insofar as Annex 5 does not contain any provision that applies to coaches with berths, the provision of paragraph 4 cannot be used to prohibit the international traffic of such coaches because there cannot be exempted from a provision which does not exist*).

- Paragraph 8 of article 3 of the Convention states that “each Contracting Party may make the admission to its territory, in international traffic, of motor vehicles... and of their drivers and their occupants, subject to its regulation concerning the commercial carriage of passengers...”. (*Opinion of the secretariat: the regulation of commercial carriage of passengers generally tackles questions other than those related to road traffic or road safety. However, nothing prevents a Contracting Party from introducing in a commercial regulation conditions touching on the rules of road traffic. For example, it could be possible to specify that the long distance carriage of passengers must be always carried out in a sitting position. This would prohibit the use of sleeping berths even if there was no prohibition at the technical level*).

In conclusion, from the viewpoint of the secretariat, no provision of the Vienna Convention or European Agreement supplementing it can be used to prohibit the traffic of coaches equipped with berths on a strictly technical basis. The only prohibition could come from the commercial regulation of transport, but in this case, the same must also apply to the national carriage of passengers.

In any case, it is up to WP.1 or its legal group to define its position on this issue.

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