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Proposal for a

**COUNCIL DECISION**

**on the application by the Union of Regulations Nos 9, 63 and 92 of the United Nations Economic Commission for Europe on uniform provisions concerning the approval of three-wheeled vehicles, mopeds and of the replacement exhaust silencing systems for L-category vehicles with regard to sound emission**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • **Reasons for and objectives of the proposal**

The United Nations Economic Commission for Europe (UN/ECE) develops harmonised requirements at international level intended to remove technical barriers to the trade in motor vehicles between the Contracting Parties 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')<sup>1</sup> and to ensure that such vehicles offer a high level of health, safety and environmental protection.

The European Union is a contracting party to the Revised 1958 Agreement, as are the Member States and applies most of the UN Regulations adopted under this Agreement, with the exception of those, which do not provide a level of protection similar or higher than EU legislation. This was the case, until now, of UN Regulations Nos 9 on noise of three-wheeled vehicles<sup>2</sup>, 63 on noise emissions of mopeds<sup>3</sup> and 92 on replacement exhaust silencing systems for L-category vehicles<sup>4</sup> ('UN Regulations Nos 9, 63 and 92', respectively). However, those UN Regulations have recently been brought up to the same level of environmental protection as obtained through Union type-approval legislation, which now allows the Union to start applying those UN Regulations. The objective of those Regulations is to establish equivalent provisions for sound control of motorcycles and clarifications to the stationary noise measurement test of such vehicles.

At EU level, Annexes IV, V and VI to Regulation (EU) No 168/2013 of the European Parliament and of the Council on the approval and market surveillance of two- or three-wheel vehicles and quadricycles<sup>5</sup>, referring to Annex IX to Regulation (EU) No 134/2014 on environmental and propulsion unit performance requirements of two- and three-wheel vehicles and quadricycles and their components, systems and separate technical units<sup>6</sup>, mandates the type approval for two and three-wheel motor vehicles, according to measurement procedures and limit values for sound levels as laid down in Annexes IV, V and VI to Regulation (EU) No 168/2013.

This Council Decision determines the application by the Union of UN Regulations Nos 9, 63 and 92 and authorises the Commission to notify the UN Secretary-General thereof.

#### • **Consistency with existing policy provisions in the policy area**

This proposal complements and is fully in line with the Union's internal market policy as regards the automotive industry.

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

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<sup>1</sup> OJ L 346, 17.12.1997, p. 78.

<sup>2</sup> UNECE Document /TRANS/WP.29/2017/2 [OJ please replace with the EU OJ publication reference, when the latter is done]

<sup>3</sup> UNECE Document /TRANS/WP.29/2017/4 [OJ please replace with the EU OJ publication reference, when the latter is done]

<sup>4</sup> UNECE Document /TRANS/WP.29/2017/5 [OJ please replace with the EU OJ publication reference, when the latter is done]

<sup>5</sup> OJ L 60, 2.3.2013, p. 52.

<sup>6</sup> OJ L 53, 21.2.2014, p. 1.

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 (EU) No 134/2014 to already apply UN Regulation No 41 on the approval of motorcycles with regard to noise, as well as permitted Regulation (EU) No 3/2014 on functional safety of two- and three-wheel vehicles and quadricycles and Regulation (EU) No 44/2014 on construction and general requirements of the same vehicles to apply on a compulsory basis 31 UN Regulations.

A similar approach has been taken with Regulation (EC) No 661/2009 on the general safety of motor vehicles, which repeals more than 50 EU Directives and replaces them with the corresponding Regulations developed under the 1958 Agreement and Directive 2007/46/EC<sup>7</sup>, 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.

- **Consistency with other Union policies**

The proposal is in line with the objectives of Regulations (EU) No 168/2013 and 134/2014 and is therefore consistent with the EU health, safety and environmental objectives and the objective to make progress towards the international harmonisation of L-category vehicles (two and three-wheel vehicles and quadricycles) legislation.

Furthermore, the proposal is in line with Council Decision 97/836/EC with a view to the application by the European Community of the Revised 1958 Agreement. Also, the WP.29 system is linked to the Union policy on competitiveness, on which this initiative has a positive impact. This proposal is also consistent with Union transport and energy policies, which are duly considered in the process for the drafting and adoption of the UN Regulations falling under the 1958 Agreement.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

Taking into consideration the object and content of the Council Decision, the legal bases are Articles 114 and 207 TFEU, in conjunction with Article 218(9) TFEU. The procedure to be followed for the adoption of the Council Decision is the one laid down in Article 3(3) of Council Decision 97/836/EC.

- **Subsidiarity (for non-exclusive competence)**

Sound requirements are already harmonised at EU level, but the relevant legislation is outdated and needs updating with respect to technical progress made since its adoption. The application of international instruments like equivalent UN Regulations and their incorporation into the EU system for the type-approval of motor vehicles can only be done by the European Union. This does not only prevent fragmentation of the Internal Market, but also ensures uniform health, safety and environmental standards across the Union. It also offers advantages derived from economies of scale: products can be made for the whole Union

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<sup>7</sup> OJ L 263 9.10.2007, p. 1.

market and even for the international market, instead of being customised to obtain national type-approval for every single Member State.

The proposal therefore complies with the subsidiarity principle.

- **Proportionality**

The proposal complies with the proportionality principle as it does not go beyond what is necessary in order to achieve the objectives of ensuring the proper functioning of the Internal Market while at the same time providing for a high level of public safety and environmental protection.

- **Choice of the instrument**

Proposed instrument: Council Decision.

The use of a Council Decision is considered to be appropriate as in line with the requirements of Article 3(3) of Council Decision 97/836/EC.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable.

- **Stakeholder consultations**

In developing the proposal the European Commission has consulted stakeholders and stakeholder organisations. There was a general consultation on the envisaged approach as regards vehicle noise emissions gathering Member States, manufacturers (European and national representatives and individual companies), component manufacturers, transport organisations and user representatives in the Motorcycle Working Group meeting. The content of the three UNECE Regulations has been supported by all the different stakeholders in that Group and also in the framework of the UNECE Working Party on Noise (GRB). The proposed approach with respect to the application of UN Regulations Nos 9, 63 and 92 has also been presented in the Technical Committee – Motor Vehicles (TCMV), which is the Comitololgy Committe on road vehicles legislation established by Article 40 of Directive 2007/46/EC, and no comments have been received.

- **Collection and use of expertise**

External expertise is not relevant in the case of this proposal. It has however been reviewed by the Technical Committee on Motor Vehicles. As for the content of the UN Regulations Nos 9, 63 and 92, it is noted that a study was carried out in 2015/2016, mandated by the Commission, which proposed improvements in those three Regulations, in order to present at least the same level of requirements with Regulations (EU) No 168/2013 and 134/2014. Following that study and based on its conclusions, the Commission proposed the necessary amendments to these three UN Regulations, adopted by the WP.29 in its session of March 2017 and subsequently resulting in the Revisions mentioned in point 1 above (Context of the Proposal).

- **Impact assessment**

The application of UN Regulations Nos 9, 63 and 92 does not lead to a revision of noise emission limits and/or thresholds, as currently set out in Regulation (EU) No 168/2013.

Furthermore, the testing methods set out in these three UN Regulations are equivalent in scope and scientific approach to the ones provided for in Regulation (EU) No 134/2014. Therefore, the proposed application process is not expected to have societal, environmental and economic impacts for the European Union or the EEA due to the overall equivalence of both the testing methods for sound emission levels proposed, as well as the sound emission limits and thresholds concerned.

Under the framework of Regulation (EU) No 168/2013 of the European Parliament and of the Council on the approval and market surveillance of two- or three-wheel vehicles and quadricycles, a cost-benefit analysis on noise and tampering in L-category vehicles was carried-out, which revealed the deterioration of noise emission in L-category vehicles due to tampering. In this respect, UN Regulations Nos 9, 63 and 92 introduce testing methods, sound emissions limit values as well as cost-effective anti-tampering elements and measures which are fully harmonised with the EU legislative framework for L-category vehicles.

- **Regulatory fitness and simplification**

In terms of administrative burden, the initiative does not have repercussions, as the UN Regulations proposed for application in the Union will not introduce new reporting or other administrative obligations for enterprises, including SMEs. On the contrary, reduction of administrative burden is targeted as the application of world-harmonised requirements allow manufacturers to present approval documentation of systems and components not only in the EU but also on the export markets from Contracting Parties to the 1958 Agreement outside the EU.

The proposal has a very positive impact on automotive EU competitiveness and international trade. The acceptance of internationally harmonised vehicle regulations by the EU's trading partners is recognised as the best way to remove non-tariff barriers to trade and to open or widen market access for EU automotive enterprises.

- **Fundamental rights**

The proposal has no consequences for the protection of fundamental rights.

#### **4. BUDGETARY IMPLICATIONS**

This initiative has no budgetary implications.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

The initiative proposes the application in the Union of UN Regulations Nos 9, 63 and 92 on the type approval with regard to sound emissions of three-wheeled vehicles, mopeds and the replacement exhaust silencing systems for L-category vehicles, respectively.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 114 and 207 thereof, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) By Council Decision 97/836/EC<sup>8</sup>, the Union acceded 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<sup>9</sup> ('Revised 1958 Agreement').
- (2) The harmonised requirements of Regulation No 9 Uniform provisions concerning the approval of category L<sub>2</sub>, L<sub>4</sub> and L<sub>5</sub> vehicles with regard to sound emission<sup>10</sup>, Regulation No 63 Uniform provisions concerning the approval of L<sub>1</sub> category vehicles with regard to sound emission<sup>11</sup> and Regulation No 92 - Uniform provisions concerning the approval of non-original replacement exhaust silencing systems (NORESS) for vehicles of categories L<sub>1</sub>, L<sub>2</sub>, L<sub>3</sub>, L<sub>4</sub> and L<sub>5</sub> with regard to sound emission<sup>12</sup> of the United Nations Economic Commission for Europe ('UN Regulations Nos 9, 63 and 92'), are intended to remove technical barriers to the trade in motor vehicles between the Contracting Parties to the Revised 1958 Agreement and to ensure that such vehicles offer a high level of safety and protection. L-category of vehicles comprises light vehicles such as powered cycles, two or three-wheel mopeds, motor cycles with and without sidecar, tricycles and quadricycles.

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<sup>8</sup> 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).

<sup>9</sup> OJ L 346, 17.12.1997, p. 81.

<sup>10</sup> UNECE Document /TRANS/WP.29/2017/2 [OJ please replace with the EU OJ publication reference, when the latter is done]

<sup>11</sup> UNECE Document /TRANS/WP.29/2017/4 [OJ please replace with the EU OJ publication reference, when the latter is done]

<sup>12</sup> UNECE Document /TRANS/WP.29/2017/5 [OJ please replace with the EU OJ publication reference, when the latter is done]

- (3) Regulation (EU) No 168/2013 of the European Parliament and of the Council<sup>13</sup> and Commission Delegated Regulation (EU) No 134/2014<sup>14</sup> mandate the adoption of permissible sound levels, replacement exhaust systems requirements and testing procedures of two and three-wheel motor vehicles and quadricycles.
- (4) Annexes IV, V and VI to Regulation (EU) No 168/2013 and Annex IX to Regulation (EU) No 134/2014 contain requirements for the type-approval of L-category vehicles with regard to permissible sound level and exhaust system.
- (5) At the date of its accession to the Revised 1958 Agreement, the Union acceded to a number of UN Regulations listed in Annex II to Decision 97/836/EC; UN Regulations Nos 9, 63 and 92 were not included in that list.
- (6) As provided for in Article 3(3) of Decision 97/836/EC, and pursuant to Article 1(7) of the Revised 1958 Agreement, the Union may decide to apply one, some or all of the UN Regulations to which it has not acceded at the time of its accession to the Revised 1958 Agreement.
- (7) Following the recent amendments to UN Regulations Nos 9, 63 and 92 aligning them with the relevant technical provisions of Regulations (EU) No 168/2013 and (EU) No 134/2014, it is now appropriate for the Union to apply UN Regulations Nos 9, 63 and 92 in order to provide for common harmonised requirements at international level. This should enable Union companies to follow one set of requirements recognised worldwide, in particular in the Contracting Parties to the Revised 1958 Agreement,

HAS ADOPTED THIS DECISION:

#### *Article 1*

The European Union shall apply Regulation No 9 - Uniform provisions concerning the approval of category L<sub>2</sub>, L<sub>4</sub> and L<sub>5</sub> vehicles with regard to sound emission, Regulation No 63 - Uniform provisions concerning the approval of L<sub>1</sub> category vehicles with regard to sound emission and Regulation No 92 - Uniform provisions concerning the approval of non-original replacement exhaust silencing systems (NORESS) for vehicles of categories L<sub>1</sub>, L<sub>2</sub>, L<sub>3</sub>, L<sub>4</sub> and L<sub>5</sub> with regard to sound emission of the United Nations Economic Commission for Europe.

#### *Article 2*

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<sup>13</sup> Regulation (EU) No 168/2013 of the European Parliament and of the Council of 15 January 2013 on the approval and market surveillance of two- or three-wheel vehicles and quadricycles (OJ L 60, 2.3.2013, p. 52).

<sup>14</sup> Commission Delegated Regulation (EU) No 134/2014 of 16 December 2013 supplementing Regulation (EU) No 168/2013 of the European Parliament and of the Council with regard to environmental and propulsion unit performance requirements and amending Annex V thereof (OJ L 53, 21.2.2014, p. 1).

This Decision shall be notified by the Commission to the Secretary-General of the United Nations.

*Article 3*

This Decision is addressed to the Commission.

Done at Brussels,

*For the Council  
The President*