Note by the secretariat

Informal Document **WP.29-166-18**
(166th WP.29 session, 23-26 June 2015,
agenda item 4.2.2)

Exchange of communications between the secretariat and OLA on the simplification of lighting and light-signalling Regulations (SLR)

A. Introduction

At the April 2015 session of GRE, IWG SLR proposed a concept for the simplification of lighting and light-signalling Regulations based on the introduction of a new part B into Regulation No. 48 and using it as a Horizontal Reference Document to which the common provisions of the individual device Regulations would be moved. GRE identified a number of issues that would need to be addressed before providing guidance to IWG SLR. GRE also noted that some of these issues would require guidance from OLA and/or WP.29. GRE invited experts to transmit to the secretariat their comments and questions on the proposed approach. The secretariat summarized the remarks received and sought advice from OLA on legal issues. The exchange of communications is reproduced below. There was also a phone conversation between the secretariat and OLA.

B. Communication of the secretariat to OLA

Following a request of the UNECE Working Party on Lighting and Light-Signalling (GRE), I wonder if you could provide legal advice on the following issues.

Background

1. There are more than 30 lighting and light-signalling Regulations – addenda to the 1958 Agreement. They deal with light sources, individual devices (headlamps and other types of lamps) and installation requirements. Individual device Regulations, being the most numerous group, contain a lot of very similar and even identical provisions on administrative procedures, markings, test procedures, conformity of production, etc. Whenever there is an amendment to such provisions in one device Regulation, it has to be repeated in many (up to 10-15) other device Regulations. These numerous so-called collective amendments have increasingly become a heavy administrative burden for the Contracting Parties, GRE, World Forum for Harmonization of Vehicle Regulations (WP.29), UNECE secretariat and, eventually, OLA. To improve the situation, WP.29 requested GRE to prepare proposals on how to simplify lighting and light-signalling Regulations.

Horizontal Reference Document: two options

2. GRE agreed that, for the purposes of simplification, the common provisions of individual device Regulations should be moved from these Regulations into a single repository, Horizontal Reference Document (HRD). The individual device Regulations will only contain references to HRD, thus making its provisions legally binding. Whenever changes to these common provisions should be necessary, this could be done in one single step by amending HRD, rather than by having all the individual device Regulations amended separately and simultaneously.

3. Concerning the form of HRD, GRE is now considering two options: (i) establish a new Resolution under the auspices of WP.29 (examples of such Resolutions can be found under http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/wp29resolutions.html) or (ii) introduce a new part B into Regulation No. 48 (R48) and use it as HRD. R48 is not an individual device Regulation, but the main installation Regulation for all lighting and light-signalling devices (http://www.unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/updates/R048r12e.pdf).

GRE has identified several legal issues which need to be addressed before choosing between options (i) or (ii). The assistance of OLA in this respect would be much appreciated.

Possible use of a new Part B of R48 as HRD

4. The provisions of Article 1 of the 1958 Agreement give Contracting Parties the freedom to select Regulations they would like to apply. According to Article 12 and Article 6 of Appendix 1, only Contracting Parties applying a specific Regulation may take decisions on its amendments, including the rights to vote and to object. Should the common provisions of individual device Regulations are moved to a new part B of R48, this would raise a number of questions with regards to the rights and obligations of the Contracting Parties, depending on whether they are applying individual device Regulations, or R48, or both.

5. There are Contracting Parties applying individual device Regulations, but not applying R48. Can such Contracting Parties be obliged to apply Part B of R48 with the common provisions of device Regulations without having signed up to R48? If so, such Contracting Parties will neither have the opportunity to vote on amendments to part B of R48 nor the possibility to reject their application. In other words, such Contracting Parties will be excluded from the decision-making process for some legal provisions they are bound to. On the other hand, Contracting Parties applying R48, but not device Regulations, will nevertheless be able to vote on or object to amendments to the common provisions of these Regulations contained in part B of R48. Do you think that this situation could be interpreted as unequal treatment of Contracting Parties? Would it contradict to the principles of international law?

6. To rectify the above problem, it has been proposed to introduce in the 1958 Agreement a clause that would grant the Contracting Parties, which are not applying a certain Regulation, the right to vote on and object to amendments to this Regulation as far as these amendments (or parts thereof) are referred to in other Regulation(s) that these Contracting Parties are applying. What is your opinion on this idea?

7. Every Regulation annexed to the 1958 Agreement is used for granting type approvals (TA) according to this Regulation (Article 1). If a TA issued by a Contracting Party according to an individual device Regulation, would it also cover the compliance with the common requirements in Part B of R48? Or shall a parallel TA according to Part B of R48 be issued?

8. Currently, a TA issued according to R48 only covers the installation requirements, and this should not be changed in the future. If a new Part B with the common provisions is introduced in R48, how could it be ensured that TA according to R48 does not cover the compliance with Part B?

B. Reply from OLA

This is in reply to the questions raised in your email of 20 May, regarding simplification of lighting and light-signalling Regulations annexed to the 1958 Agreement on uniform technical prescriptions for wheeled vehicles. We are grateful for the clarifications that you provided on our telephone conversation of last Thursday, which were helpful in understanding the context of this request.

In our telephone conference, we inquired about the current status of Revision 3 to the 1958 Agreement, of which we had been informed in the past by UNECE. The search for solutions on how to simplify the mechanism of Regulations and their amendment is one that arises not only with respect to lighting and light-signalling, but in more general terms in the context of the entire 1958 Agreement. It would seem preferable not to adopt a piecemeal approach to such problems, in order to provide legal certainty and clarity with regard to the 1958 Agreement as a whole. In this regard, it would appear that Revision 3 may provide an opportunity to address matters of this kind in a comprehensive way. We understand from our conversation that Revision 3 is ongoing and, with reference to Section 4 of ST/SGB/2001/7, we would invite UNECE to keep us informed of any developments that may result in a review of the final clauses of the 1958 Agreement.

The specific questions in your email refer to the proposal of introducing a new Part B into

Regulation No. 48, which could then be used as a horizontal reference document on lighting and light-signalling.

In paragraph 5 of your email, you ask whether Contracting Parties applying individual device Regulations, but not applying Regulation No. 48, could be obliged to apply a hypothetical Part B of Regulation No. 48 containing common provisions of device regulations without having signed up to Regulation No. 48. In reply, we observe that Article 12, paragraph 2, of the 1958 Agreement explicitly indicates that an amendment to a Regulation can only be binding (following the procedure established therein) "upon those Contracting Parties applying the Regulation". It follows that such an option would contradict the terms of the 1958 Agreement. As regards matters relating to votes on amendments and the possibility to oppose to proposed amendments, these are also governed by the 1958 Agreement. Pursuant to Article 6 of Appendix 1, each Contracting Party to the Agreement "applying the Regulation" has the right to vote on proposed amendments to Regulations. As for Article 12, paragraph 2, it only contemplates the possibility for "Contracting Parties applying the Regulation at the time of notification" to inform of their disagreement with the amendment.

In paragraph 6 of your email, you refer to the proposal to introduce in the 1958 Agreement a clause that would grant the Contracting Parties, which are not applying a certain Regulation, the right to vote on and object to amendments to this Regulation as far as these amendments (or parts thereof) are referred to in other Regulations that these Contracting Parties are applying. In reply, we note that this would require an amendment to Article 12, paragraph 2, of the 1958 Agreement and to Article 6 of Appendix 1 to the Agreement, which would need to be adopted following the procedures provided for under Article 13 of the 1958 Agreement. It is further noted that such amendment is described in your email in very far-reaching terms, which could have implications that go beyond the specific area of lighting and light-signalling. It is advisable that such a course of action only be followed once the Contracting Parties have considered in detail all the potential implications of such an amendment on other areas of the 1958 Agreement, as well as the practical issues that may arise in its application (e.g., how would the Contracting Parties allowed to participate in each vote be determined, what would be the majorities required for adoption of an amendment, how would amendments requiring participation of other Contracting Parties be identified, how would expressions of disagreement by Contracting Parties not applying the Regulation be counted for the purposes of determining whether "more than one-third of the Contracting Parties applying the Regulation" have opposed to it, pursuant to Article 12, paragraph 2, etc.).

The questions raised in paragraphs 7 and 8 of your email pertain to the implementation of the Agreement, which does not fall under the purview of the Treaty Section, as the office discharging the depositary functions of the Secretary-General. We are therefore not in a position to provide an answer to them.