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APPLICATION OF INFORMATICS IN ROAD SAFETY

Transmitted by Switzerland

1. Key contents of the document

The document, which was submitted by Germany (TRANS/WP.1/2001/15), analyses the systems for externally influencing speed known as ISA (Intelligent Speed Adaptation) and draws the following conclusions:

- 1.1 The system that informs the driver by a visual or audible signal when the permitted speed limit has been reached does not affect the responsibility imposed on the driver by the CCR¹, and is therefore compatible with the CCR.
- 1.2 With the system that the driver can switch on and off independently to control the maximum externally influenced speeds automatically, the responsibility required by the CCR is still with the driver, and the system is therefore compatible with the CCR.
- 1.3 The system that automatically adapts the speed of the vehicle externally in accordance with local circumstances and which cannot be switched off by the driver is in conflict with Art. 8 and Art. 13 CCR. The authorities are not allowed to accept such systems for reasons of road safety. Since, however, road safety policy is the responsibility of individual contracting States, positive statutory regulation is not really possible in the CCR.

¹ CCR = 1968 Vienna Convention on Road Traffic.

2. Our assessment

May we state first of all that we shall only comment on the ISA system as described in No 1.3, since the other two ISA systems in Nos 1.1. and 1.2. do not raise any legal issues relating to the CCR.

2.1. The CCR regulations

Art. 8 Para. 5 CCR states “Every driver shall at all times be able to control his vehicle or to guide his animals.”

Art. 13 Para. 1 CCR states “Every driver of a vehicle shall in all circumstances have his vehicle under control so as to be able to exercise due and proper care and to be at all times in a position to perform all manoeuvres required of him. He shall, when adjusting the speed of his vehicle, pay constant regard to the circumstances, in particular the lie of the land, the state of the road, the condition and load of his vehicle, the weather conditions and the density of traffic, so as to be able to stop his vehicle within his range of forward vision and short of any foreseeable obstruction. He shall slow down and if necessary stop whenever circumstances so require, and particularly when visibility is not good.”

2.2 The significance of the CCR regulations under No 2.1.

Swiss national traffic regulations concerning the significance of these CCR regulations:

- Art. 31 Para. 1 SVG [Swiss Road Traffic Act] in conjunction with Art. 3 VRV (Swiss Traffic Regulations Ordinance) corresponds to Art. 8 Para. 5 and Art. 13 Para. 1 sentence 1 CCR;
- Art. 32 Para. 1 SVG in conjunction with Art. 4 VRV corresponds to Art. 13 Para. 1 sentences 2-3 CCR.

Common to these international and national regulations is the fact that the responsibility for the control of the vehicle and the control of the appropriate and prescribed speeds is placed on the **driver**. The driver is responsible for wrong behaviour under both civil and criminal law. Particularly in consideration of criminal responsibility, which depends on fault, it should be stated here that the driver can only be punished for behaviour in which **he** is at fault (intentionally or negligently). The driver therefore cannot be made criminally accountable for the fault of a third party unless he is a co-offender, instigator or accessory. Naturally, criminality presumes a violation on the grounds of criminally punishable behaviour, e.g. exceeding a prescribed speed limit.

2.3. The operation of the ISA system under No 1.3.

According to the description in the document, this ISA system operates as follows: a device installed in the vehicle controls the speed of the vehicle by means of a device installed outside the vehicle, without the driver being able to exercise any influence on increasing the speed of the vehicle. Clearly, it is only possible to slow down and to stop.

2.4. Legal considerations

The regulations cited and interpreted in Nos 2.1. and 2.2. make the driver responsible for controlling the vehicle and controlling the speed. In as far as the ISA system under No 1.3. imposes the locally applicable speed on the vehicle, e.g. lower speed in built-up areas, it also takes away from the driver the possibility of, and thus his personal responsibility for, controlling the speed, albeit only with regard to increasing it: with this system, the driver cannot exceed the externally controlled speed. Maximum speed limits make a considerable contribution to road safety, and adherence to them should therefore be deemed of high priority. The ISA system serves the sole purpose of not exceeding the speed limit, thus adhering to the signed or generally prescribed speed limit. The automatic downward control of the maximum speed by the ISA system under No 1.3. thus does not cause criminal offences but prevents them. From this point of view the driver, whose problem of speed control is only taken away from him to the extent that he does not have to ensure that the prescribed speed limit is adhered to, cannot commit a fault in purely legal terms since there are no objective facts to support this. The driver does forfeit the ability to take personal responsibility for controlling speed to a very limited extent, but only with the positive result from the point of view of the legislator and of road safety of adhering to a prescribed speed limit. We see no conflict here with Art. 8 and Art. 13 CCR.

However, the system could have limited negative effects on road safety. If it is not possible to introduce the system generally into all vehicles and throughout a given area, there is a perfectly genuine danger of rear-end collisions. The faster the speed of vehicles fitted with the system is reduced, for example, from a speed for out-of-town driving to a speed inside built-up areas, possibly without activating the vehicle's brake lights, the more difficult it might be for vehicles without the equipment to slow down in good time. While there is no real issue here of responsibility for the driver of the equipped vehicle, it would still be an unpleasant situation. This is the sole point on which we would have certain reservations about the system, not for reasons of driver responsibility, but for reasons of general road safety.

2.5 Conclusions

The ISA system under No 1.3. imposes adherence to the prescribed speed limit externally, independently of the driver. It ensures that the prescribed speed limits can be adhered to and thus that the driver cannot exceed such speed limits. The system takes away the driver's ability to select the prescribed speed limit himself, but does not make him responsible for it under criminal law, since he is not committing a traffic violation. In as far as the ISA system under No 1.3. forces the vehicle driver to adhere to the speed limits set by international or national law, in our opinion it does not infringe Art. 8 and Art. 13 CCR. We do not consider an amendment of the CCR to prohibit such a system advisable.

Reservations about the system arise solely with regard to general road safety, so long as it is not in operation for all vehicles in all areas.

Another question is whether this system should be simply tolerated, not recommended or actually recommended. Here, in our opinion, in-depth investigation is needed which should also take into account the contents of the 1993 report on road safety.
