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Global Forum for Road Traffic Safety

**Group of Experts on drafting a new legal instrument
on the use of automated vehicles in traffic**

Ninth session

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Item 4 of the provisional agenda

Substantive activities

**Legal analysis of the notion of driver under the Vienna
Convention on Road Traffic**

Submitted by the expert from France

This document presents the French legal analysis and interpretation of the notion of “driver” under the Vienna Convention on Road Traffic

I. Background:

The Group of Experts (GoE) on drafting a new Legal Instrument on the use of Automated Vehicles in traffic (LIAV) was tasked with to prepare a draft new legal instrument on the use of automated vehicles in domestic and international traffic.¹ It was set up by the Inland Transport Committee (ITC) at its 83rd session in February 2021². Renewed in February 2023³ and February 2024, the Group of Experts worked over the past two years to carry out an in-depth review of existing legal instruments in order to identify potential gaps with regard to the circulation of automated vehicles.

In order to *undertake the assessment collectively of any gaps in the conventions and resolutions under the auspices of WP.1, and identify the issues to be addressed*, the Group of Experts decided to perform a line-by-line review of 1949 and 1968 conventions on Road traffic⁴.

Among the main issues, the Experts from Sweden and the United Kingdom who carried out survey, identified the following in particular: *“How is the requirement for a driver met in vehicles with an ADS engaged? Who is the driver? Who is responsible for the dynamic and non-dynamic driving task (DDT and non-DDT)?”*

During the summer 2024, two informal meetings were held. The experts from UK and Sweden, reporting on the activities carried out indicated: *“There was broad consensus that the requirement for a driver under both Conventions means that the driver must be a legal person. However, some interpret that the driver has to be a natural person (a human) while others consider it can be a company”, and “The experts agree that the requirement for a driver under both Conventions means that the driver must be a legal person, noting that the definition of a legal person may differ in different CPs. Some reported that in their Country, the current interpretation of the term “driver” in the Road Traffic Conventions is that it is a natural person. This interpretation may evolve depending on developments at GE.3. Some reported that, in the context of ADS in traffic, the term driver relates to performance of the DDT by the ADS. This interpretation considers that the term driver includes the ADS (or the company that developed the ADS.”*

II. The driver definition

This document presents the French legal analysis and interpretation of the notion of “driver” under the Vienna Convention on Road Traffic:

A combined reading of articles 8, 13 and 41 of the 1968 Vienna Convention leads to consider that the driver is a natural person (human being) who drives the vehicle, ie is in control of its movements at all times.

- i) The requirement that *“Every driver shall possess the necessary physical and mental ability and be in a fit physical and mental condition to drive”* (Art.8 § 3,

¹ ECE/TRANS/2021/6, Annex III, paragraph 1: Terms of reference of the Group of Experts on drafting a new legal instrument on the use of automated vehicles in traffic

² Inland Transport Committee - Eighty-third session - Geneva, 23–26 February 2021, List of decisions : *“Approved the establishment of a new Group of Experts tasked with drafting a new legal instrument on the use of automated vehicles in road traffic on the basis of its Terms of Reference as contained in ECE/TRANS/2021/6, Annex III”*

³ Inland Transport Committee - Eighty-fifth session - Geneva, 21–24 February 2023, List of decisions, point 23:
“23. Decided to:
(a) Endorse the extension of the mandate of the Group of Experts on drafting a new legal instrument on the use of automated vehicles in traffic (LIAV) until December 2024,
with a focus to (i) undertake the assessment collectively of any gaps in the conventions and resolutions under the auspices of WP.1, and (ii) identify the issues to be addressed;
(b) Note the work already done in this area; and
(c) Recommend that WP.1 revisit the ToR of the Group of Experts;”

⁴ ECE/TRANS/WP.1/GE.3/2023/4, paragraph 47

- Vienna Convention) and that “*Every driver of a motor vehicle must hold a driving permit*” (Art. 41 §1, Vienna Convention) can be read as preventing a driver to be a legal entity (a company), which by its very nature, cannot meet this requirements.
- ii) The requirement that “*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.*” (Art. 13, §1, Vienna Convention) illustrates that a driver must control the vehicle at all times. Thus, the condition of exercising dynamic control of the vehicle appears to be an indispensable condition for being designated as the driver of the vehicle.

When a natural person delegates the dynamic control of a vehicle to an automated driving system, this natural person can no longer be designated as the driver of that vehicle. Nevertheless, Article 34 bis of the Vienna Convention lays down two conditions for the requirement of a driver of a vehicle to be deemed satisfied in this situation, without admitting that the system (or the legal entity behind the system) is a driver. The automated driving system must comply with:

“a) domestic technical regulations, and any applicable international legal instrument, concerning wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles, and

(b) domestic legislation governing operation.”

The last sub-paragraph of the article limits its scope to the territory of the contracting party.

This amendment does not confer the status of "driver" on the automated driving system (nor on the legal entity behind the system), but simply considers that the circulation of vehicles equipped with such systems complies with the provisions of the Convention (subject to the two conditions set out). Consequently, the provisions concerning the driver are not enforceable in this case. Indeed, the obligations incumbent on the driver have not been explicitly transferred to any legal person (the vehicle manufacturer, the automated driving system producer, the service provider, nor to a natural person in charge of monitoring operation...).

It is therefore up to each Contracting Party to the Vienna Convention to adapt its domestic legislation and regulation in order to allow or not the circulation of vehicles with automated driving system on the basis of Article 34 bis, and to define operating conditions. For example, with regard to the issue of liability, in French law, the positive law resulting from Ordinance no. 2021-443 of April 14, 2021 and Decree no. 2021-873 of June 29, 2021, specifies the division of criminal liability between the driver, the remote operator and the manufacturer or organizer of the automated road transport service. These provisions are national and apply only in France.

Different provisions may be adopted in other Contracting Parties to the Vienna Convention. Should that be the case, it could compromise international harmonisation on road traffic. What's more, should new international provisions be adopted, they would take precedence over national provisions in the event of contradiction between the texts.

III. Conclusions

Article 34bis of the Vienna Convention allows Contracting Parties to authorize the circulation of vehicles with automated driver systems which control the dynamic driving task of the vehicle, if they meet the cumulative conditions laid down in this article. The requirement that “*Every moving vehicle or combination of vehicles shall have a driver.*” is then deemed to have been met. However, the automated driving system (or legal entity behind the system) is not considered to be a driver. As a consequence, the provisions of the Vienna Convention concerning the latter do not apply to the automated driving system, nor to a natural person in charge of monitoring operation, nor to any legal entity, unless additional clarification.

The Group of Experts may take into consideration this legal analysis of the notion of driver under the Vienna Convention on Road Traffic.

The Group of Experts may acknowledge that, at least one contracting party of the Vienna Convention considers that,

- i) without further clarifications, the combined reading of current articles 8, 13 and 41, may prevent the “Driver” to be a legal entity such as a company.
- ii) the obligations incumbent on the driver have not been explicitly transferred to any legal entity nor to any natural person by article 34bis

The Group may wish to consider this conclusion as a gap in the UNECE's legal instruments.

In further work, the expert group may wish to reflect on which requirements – among the ones currently applicable to the driver - would seem appropriate to apply to the various actors gravitating around a vehicle equipped with an automated driving system: the former driver, the vehicle manufacturer, the automated driving system producer, the natural person in charge of monitoring operation, or the entity responsible for activating the system and monitoring the vehicle (service supplier).
