



VEHICLE LEGISLATION – SERBIA VS. EUROPE

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ABSTRACT: The current state of vehicle technology development has been characterized by the production of a very wide range of different types and categories of vehicles. Modern vehicles are characterized by a great complexity of fitted parts and mechanisms. These facts inevitably lead to the intensive development of legislation that cover the entire field of the automotive industry, as well as its harmonization at the international level. From the very beginning of harmonization, Yugoslavia has played a very active role in the development and implementation of the Regulations adopted within the United Nations, the Economic Commission for Europe. As the legal successor, Serbia continued on that path, but due to the situation in the previous 30 years, the activities within the harmonization of regulations have been significantly slowed down, primarily with the European legislation. The paper presents the current state of harmonization of regulations in Serbia with European legislation, as well as certain inconsistencies that occurred during the application of national regulations and performed comparative analysis. Also, an overview of the plan for harmonization of legislation has been given, and some examples of noncompliance are pointed out, which should be overcome with the proposed harmonization plan.

KEY WORDS: UN Regulations, EU Directives, Harmonization

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ZAKONSKA REGULATIVA O VOZILIMA - SRBIJA VS. EVROPA

REZIME: Trenutno stanje razvoja tehnologije vozila karakteriše proizvodnja veoma širokog spektra različitih vrsta i kategorija vozila. Savremena vozila odlikuje velika složenost ugrađenih delova i mehanizama. Ove činjenice neizbežno dovode do intenzivnog razvoja zakonodavstva koje pokriva celo područje automobilske industrije, kao i do njegovog usklađivanja na međunarodnom nivou. Od samog početka usklađivanja, Jugoslavija je imala veoma aktivnu ulogu u razvoju i primeni uredbi usvojenih u okviru Ujedinjenih nacija, Evropske ekonomske komisije. Srbija je kao pravni naslednik nastavila tim putem, ali su zbog stanja u prethodnih 30 godina aktivnosti u okviru usklađivanja propisa znatno usporene, pre svega sa evropskim zakonodavstvom. U radu je prikazano trenutno stanje usklađenosti propisa u Srbiji sa evropskim zakonodavstvom, kao i određene nedoslednosti do kojih je došlo tokom primene nacionalnih propisa i izvršene uporedne analize. Takođe, dat je pregled plana usklađivanja zakonodavstva i ukazano je na neke primere neusklađenosti koje bi trebalo prevazići predloženim planom usklađivanja.

KLJUČNE REČI: propisi UN, directive EU, usklađivanje

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INTRODUCTION

The automotive industry is one of the leading branches of industry in the world. The development of technology, the accessibility of new products to an expanding population, as well as the increase in living standards and population needs, lead to a much wider offer of automotive products, both by categories and types of vehicles and their equipment. Accordingly, the automotive industry is a synthesis of traditional and modern technologies, which leads to the engagement of top experts in very different fields (mechanical engineering, electronics, electrical engineering, technology, design, aerodynamics, ecology, economics, etc.). With the development of the automotive industry throughout history and the increasing use of vehicles as an integral part of the daily functioning of all mankind, the need for the development of national and international regulations have emerged. This development is inevitably more and more intensive, so the need for harmonization of regulations have become extremely important. Demands for more and more frequent amendments to the existing, but also the development of completely new regulations, required a very demanding organization of national and international organizations that have been established and are in charge of their implementation. The feasibility of the regulations implementation, required the creation of mechanisms that will enable efficient work on regulations, as well as their rapid implementation. For that cause, each country delegated at the national level the bodies in charge of enacting, implementing and harmonizing of regulations, but at the same time they worked on the establishment of international organizations, which were supposed to be in charge of regulations at the international level. Meanwhile, international organizations have been established within the United Nations, but also at the level of the European Union.

1. HISTORY OF VEHICLE LEGISLATION

1.1 European Union

Starting in 1970, the European Union began to develop a system of laws and regulations (EEC Directives), which also applied to the automotive industry and technical regulations in it. The first official Directive adopted was 70/156/EEC (dated 6 February 1970), and concerned the type-approval of motor vehicles and their trailers. It was later the basis for all other Directives. Until 1993, the Directives were marked with an extension EEC (European Economic Community), from 1993 to 2009 with an extension EC (European Community), and from 2010 with an extension EU (European Union) [1]. The adoption of these regulations was aimed at unifying the national regulations of the Member states and had to go through the procedure of acceptance and harmonization in each Member state separately.

1.2 Serbia

Shortly after the establishment of the 1958 Agreement at the United Nations Economic Commission for Europe (UNECE), Yugoslavia, as the tenth country in a row, signed the Agreement in 1962, guided primarily by the following goals:

- increasing of vehicle active and passive safety
- environmental protection

- creating the conditions for undisturbed circulation of products in international trade, e.g. for unobstructed exports of domestic products of the automotive industry and related companies
- prevention of imports of non-homologated (we can say unsafe) products, as well as the protection of the domestic market from low-quality imported and domestic products
- active involvement of domestic scientific, R&D and production capacities in modern trends of technological and normative requirements, etc.

This shows a clear intention and vision to direct the domestic industry and society towards the immediate inclusion of all activities in all current trends in the development of the European and World automotive industry. With the breakdown of the former Yugoslavia during the 1990s, the Republic of Serbia legally accepted the role of the legal successor of Yugoslavia. This was a logical move, because Serbia retained all the institutional positions of the former state, so it did not have to spend time on accession, negotiations and checking the fulfillment of conditions for membership in various international organizations. Thus, as the legal successor of Yugoslavia, the ordinal number of the signature of the 1958 Agreement was retained, so all homologation Approvals issued by the Competent Authority of the Republic of Serbia are marked "E10". However, the legal heritage brought with it not only privileges and advantages, but also a burden and an obligation to deal with. All the new states created by the breakdown of the former Yugoslavia, except Republic of Serbia, were completely relieved of their obligations to international institutions, so from the very beginning they were in a position for planning the strategy for enactment of regulations. Therefore, it was easier for them to harmonize with the structure and policy of the regulation in all areas, and thus in the field of automotive industry and traffic safety. On the other hand, the hard breakdown of Yugoslavia, along with war conflicts, sanctions, but also the already mentioned legal legacy, posed a great burden for Serbia due to the impossibility of regular monitoring of the current state of regulation, so these "lost" twenty years have left their mark on the harmonization and implementation of international regulations. Just with the signing of the Agreement with the European Union on the beginning of accession negotiations for Serbia's membership in the EU, the analysis and harmonization plan of domestic legislation with the European one has begun. This accession agreement, among other things, established negotiating groups for the harmonization of legislation, with clearly defined deadlines for full harmonization of regulations.

2. THE STRUCTURE OF APPLIED REGULATIONS

2.1 UN Regulations

The 1958 Agreement [7] is one of the UNECE Agreements that aims to establish uniform standards for vehicles and their components, in terms of safety requirements, environmental protection, as well as in terms of energy efficiency. The Agreement seeks to promote the harmonization of UN Regulations and the mutual recognition of approvals between the Contracting parties to the Agreement. It was adopted on March 20th, 1958 in Geneva, upon the proposal of the Federal Republic of Germany, and entered into force on June 20th, 1959, after it was signed by several European countries. Its primary, original name is "Agreement Concerning the Adoption of Uniform Conditions of Approval and Reciprocal Recognition of Approval for Motor Vehicle Equipment and Parts". In its original form, the Agreement allowed only UNECE Member states to participate. The second revision of the Agreement was made in 1995, when its name was partially changed to the current one - "Agreement

Concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles, Equipment and Parts Which Can Be Fitted and/or Be Used on Wheeled Vehicles and the Conditions for Reciprocal Recognition of Approvals Granted on the Basis of These Prescriptions". The second revision entered into force on October 16th, 1995. The aim of this second revision, among other things, was to promote the inclusion of non-European countries in a united approval system and to raise the Agreement to a global level. Significant success has been noted in this area. However, the Agreement still contains certain provisions that prevent certain states from becoming its Contracting Parties, due to their national legislation. So far, 57 member states of the United Nations (10 of which are non-European countries) have joined this Agreement, as well as one regional integration organization (European Union). The newest UN member state that have joined the Agreement is Pakistan, which acceded to the Agreement in 2020. That shows that the Agreement continues to expand and fulfills its mission. Of all the European member states of the UNECE, only 7 of them did not sign the 1958 Agreement. These are practically only the smallest European countries, which have no influence in the vehicle industry (Andorra, Iceland, Liechtenstein, Monaco and Vatican), or their geopolitical position dictates their current position under the Agreement (Israel, Moldova). A much more important fact for the 1958 Agreement and its expansion is that both UNECE member states from the North American continent (Canada, USA) did not sign the Agreement. On the other hand, Kazakhstan acceded to the Agreement in 2011, as the first Central Asian country. The overall importance of the Agreement itself can only be seen when we take into account the fact that, in addition to almost all European countries, among the non-European countries that joined the Agreement are some of the most important in the automotive industry (Japan, Republic of Korea, Thailand, Malaysia, Australia, South Africa), as well as the European Union itself, for sure globally the most influential international regional organization.

2.2 EU Directives

In most cases, the EEC/EC/EU Directives are, in terms of technical requirements, completely identical to the UN Regulations. With a very small number of Directives and relevant Regulations, there are significant differences in terms of technical requirements. The identity of the technical requirements of the Directives and the UN Regulations has the consequence that currently a significant number of UN Regulations are integrated into the EU Approval system. An additional explanation is needed due to the introduction of a new term in the titles of legislation – the Regulation. It must be emphasized that this is not about the UN Regulations, but about the concept by which the European Union wanted to make a difference in the obligation and the way of implementing its legislation. Namely, regulations are the most direct form in EU legislation - as soon as they are adopted, they become mandatory for application in all EU Member states, in parallel with national laws. The Governments of the Member states do not need to take any additional measures to enforce this type of document. On the other hand, Directives are forwarded to national institutions, which have to take corresponding measures to incorporate them into their legislation. The last Directive relating to motor vehicles was adopted in early 2010, from which it can be concluded that the EU has practically abandoned this form of regulatory acts in the automotive sector, which certainly leads to an increasing level of harmonization of regulations in EU Member states. EU Decisions are documents of the lowest binding rank for Member states, and have to be applied only in specific cases. Each EU Regulation must be adopted by the Council of the European Union and the European Parliament, as well as by the European Commission itself. This system of legal regulations is applied in all sectors, not only in the automotive. The first Regulations in the field of vehicle Approval were adopted in 2007.

2.3 Serbian legislation

2.3.1 The Law on Road Traffic Safety

The basic document that deals with all issues related to the wide field of traffic safety, including vehicles, is the Law on Road Traffic Safety [4], entered into force in 2009. This law regulates traffic rules, behaviour of traffic participants on the road, traffic restrictions, traffic signals, signs and orders that must be followed by traffic participants, conditions that must be met by drivers, training of candidates for drivers, driving exams, the right to drive vehicles, issue of driving licenses, issue of vehicles stickers for people with disabilities, conditions that must be met by vehicles, technical inspections, testing and registration of vehicles, special measures and authorizations applied in road traffic, as well as other issues that relate to road safety. An indisputable fact is that the enactment of this law was necessary, especially taking into account the time period that has elapsed since the enactment of the legal acts that preceded to this one. On the day this Law enters into force, the Law on Basics of Road Traffic Safety and the previous Law on Road Traffic Safety ceases to be valid, except with regard to certain articles, which shall apply until the adoption of the relevant bylaws. The Law on Road Traffic Safety stipulates that the Government, at the proposal of the Ministry in charge of traffic affairs, establishes the Road Traffic Safety Agency, as a public agency responsible for carrying out all activities related to the implementation of regulations on vehicle homologation and testing, as well as traffic safety.

2.3.2 The Regulation on Motor Vehicles and Their Trailers Classification and Technical Conditions for Vehicles in Road Traffic

This Regulation [6] prescribes the classification of motor vehicles and their trailers, conditions that must be met by vehicles in traffic on the road in terms of dimensions, technical conditions and devices, assemblies and equipment and technical standards, the way, time of possession and use of winter equipment on vehicles in road traffic. as well as conditions regarding the use and technical characteristics of the tourist trains. Article 342 of the Law on Road Traffic Safety defines that this Regulation is adopted by the Minister in charge of traffic affairs within six months from the day the Law enters into force. This work was slightly delayed, so that this Regulation entered into force on September 20th, 2010. However, it quickly became clear that there were a number of ambiguities and inconsistencies in the Regulation, so after two amendments to the original document, a new version of Regulation was published in the Official Gazette of the Republic of Serbia in 2012. This new version so far had eight amendments.

2.3.3 Regulation on Vehicle Testing

This Regulation [3] prescribes the procedures and way of testing of motor vehicles and their trailers, issuing certificates and keeping records on performed tests of motor vehicles and trailers. Pursuant to Article 249, paragraph 5 of the Law on Road Traffic Safety, this Regulation was adopted by the Minister of Infrastructure and Energy, because according to the previous organization of the Government of the Republic of Serbia, he was in charge of traffic affairs.

2.3.4 Regulation on Homologation (draft)

Having in mind that the area of homologation and conformity control is not completely legally regulated, the Traffic Safety Agency, in cooperation with the Faculty of Mechanical Engineering, University of Belgrade, made a proposal for the Regulation on homologation [2], which is expected to be adopted and applied soon. This Regulation prescribes:

- more detailed conditions on the procedure and way of homologation or approval of individually or serially produced vehicles (complete, completed, modified and incomplete), ie devices, assemblies and equipment on vehicles
- more detailed conditions on the procedure and way of controlling the conformity of newly manufactured vehicles, ie devices, assemblies and equipment on vehicles
- more detailed conditions on the procedure and way of control of conformity of production of vehicles, ie devices, assemblies and equipment on vehicles.

The proposal of the Regulation stipulates that vehicle Approval tests may be carried out in one phase in the case of incomplete and complete vehicles, or in several phases as multi-stage approval in the case of completed or modified vehicles. An individual vehicle approval is carried out for an individually completed, modified or individually manufactured vehicle. The name of the manufacturer, as well as the make, type, variant and version of the individually completed or modified vehicle does not change in relation to the name of the manufacturer, make, type, variant and version of the incomplete or base vehicle. The manufacturer of an individually manufactured vehicle defines the make, type and commercial mark, as well as the VIN mark and the manufacturer's plate. The appendix to the draft Regulation defines the procedures for each vehicle category. According to the proposal of the Regulation, compliance with the conformity control checks the fulfillment of technical conditions in accordance with the regulations in the field of road traffic safety. Conformity control of imported vehicles, ie vehicles manufactured, completed or modified in the Republic of Serbia is carried out in relation to the type of serially or individually newly produced complete, completed or modified vehicle, for the purpose of placing on the market or placing on the road. Conformity control of devices, assemblies and equipment on imported vehicles, if specifically prescribed, shall be carried out in relation to the type of appropriate device, assembly and equipment of vehicles, for the purpose of placing on the market. The manufacturer is obliged to ensure the continuous application of procedures that ensure the conformity of production. The tasks of controlling the conformity of production include the review of the submitted documentation, the preparation of the homologation Test report and the issuance of a Compliance statement.

2.3.5 The Law on Transport of Dangerous Goods

Vehicles intended for the transport of dangerous goods in the Republic of Serbia are regulated by the Law on Transport of Dangerous Goods [5], The European Agreement concerning the International Carriage of Dangerous Goods by Road (ADR) [8] which has been ratified by the Republic of Serbia and which is referred to in the mentioned Law, as well as the Regulation on the way and procedure of issuing ADR vehicle approval certificates. According to the Law on Transport of Dangerous Goods (Article 42), the compliance of vehicles with the requirements of Chapters 9.2 - 9.8 of the ADR have been confirmed by issuing an ADR certificate of approval for a vehicle for transport of dangerous goods (hereinafter: ADR certificate of approval for a vehicle). technical characteristics of the vehicle and prescribed documentation. In addition to the requirements of Chapters 9.2 - 9.8 of the ADR, a vehicle that is individually or serially manufactured or modified must be technically correct and comply with uniform technical conditions in accordance with the regulations on homologation, ie the conditions prescribed by the Law on Road Traffic Safety. The requirement that the vehicle must be harmonized with uniform technical conditions, as it is prescribed for all vehicles and the Law on Road Traffic Safety, opened a number of problems for vehicle owners who do not meet the mentioned requirement. These are vehicles that have already been registered in the Republic of Serbia and received the first

ADR certificate of approval for the vehicle before the entry into force of the Law on Transport of Dangerous Goods, ie the establishment of the Transport Administration dangerous cargo in 2012. These are mainly trailers - tanks of domestic production (Gosa, Utva, Vozila Gajic) for which there are no Approvals on homologation according to UN Regulation R13, towing vehicles (tractors) for which there are no Approvals on homologation according to UN Regulation R105, as well as trailers on which the brake system was repaired (eg subsequent installation of anti-lock devices - ABS), ie replacement of axle assemblies without appropriate documentation, testing and checking. Both of these UN Regulations are specifically emphasized in Part 9 of the ADR Agreement and are mandatory in the Republic of Serbia. The mentioned problem forced the lawmakers to enable a transitional period for the use of the mentioned vehicles through transitional and final provisions (Article 75), until December 31st, 2017, ie December 31st, 2018 for vehicles that were not tested after the conversion. Pursuant to Article 26 of the Law on Amendments to the Law on Transport of Dangerous Goods, the stated deadlines have been extended until December 31st, 2021. It remains to be seen whether this deadline will remain or a new shift will occur due to a known problem with the Covid19 disease. The vehicle fleet intended for the transport of dangerous goods in the Republic of Serbia, which is subject to the requirements of Part 9 of the ADR, and which numbers about 2,500 vehicles, has been significantly renewed in the last few years. This fact, as well as the write-off of older vehicles, reduced the number of legally "disputed" vehicles (it is estimated that their number ranges between 250 and 300 vehicles). The Regulation on the way and procedure of issuing ADR vehicle approval certificates (hereinafter the Regulation) prescribes in detail the way and procedure of issuing ADR vehicle approval certificates, ie documents proving compliance with requirements. An age limit of 15 is introduced for vehicles that are issued for the first time with an ADR certificate of approval for a vehicle in the Republic of Serbia. The Regulation structures vehicles (newly manufactured, vehicles imported as used, vehicles already registered in the Republic of Serbia, vehicles that fully or partially (due to inherited condition) meet the prescribed requirements) and requirements regarding documentation proving the necessary compliance. In that sense, the level of requirements for a new vehicle produced, both in the country and abroad, is identical and corresponds to the one valid in the countries of the European Union. The only difference relates to the application of UN Regulation R111, which refers to the lateral stability of vehicles with superstructures (in this case, tank vehicles with a test pressure of less than 4 bar) for new vehicles manufactured in the Republic of Serbia. The mentioned approval is not required for the vehicles according to the mentioned Regulation, but the proof of fulfillment of the technical requirements contained therein, which must be confirmed by the Notified body. The derogation introduced by the Regulation was due to a very small number of new types and units of domestically produced tank vehicles, as well as the lack of an authorized Technical Service for UN Regulation R111. Also, the Regulation defines that the notification of homologation according to UN Regulation R105 is mandatory for all newly manufactured vehicles applying for the ADR certificate of approval for a vehicle in the Republic of Serbia, except for vehicles of category N1 which are classified as EX/II vehicles in accordance with ADR. Manufacturers of vehicles of the specified category (N1) do not perform homologation tests according to the specified Regulation at all.

3. INCONSISTENCIES OF EU AND SERBIAN LEGISLATION

3.1 Causes and reasons for incompliances

An additional problem of the current legislation in the Republic of Serbia is the way of enacting the currently valid regulations. As a basis for the adoption of the Law on Road

Traffic Safety and all other regulations and documents, the existing regulations were used, which were already outdated in terms of structure and content, so it turned out that the new regulations, despite great engagement, contained too many inconsistencies with the accepted international regulations, but also with regulations valid in Europe. The problem is reflected in the import of new and used vehicles from the area of Europe, where during the conformity control of vehicles with domestic regulations, incompliances are established, ie collision of certain articles of domestic regulation with the relevant UN Regulations or EU Directives, or even a complete lack of regulation (example: the status of old-timers in the Republic of Serbia). This was the reason for a large number of amendments to the existing domestic regulations (each of the regulations was amended at least once a year). These amendments mainly referred to the corrections of incompliances, which were successively revealed by additional analysis of regulations or through solving direct problems in practice. With the existing structure of domestic regulations, the problem of harmonization with international regulations remains permanently open. This is supported by the previously mentioned fact that changes in European regulations are becoming more intensive, and even monitoring these changes is a problem, and changes and additions based on that are practically impossible.

3.2 The possibility of applying the European concept of regulations

Having all the above in mind, with the signing of accession negotiations with the EU, a detailed analysis of all regulations in the Republic of Serbia (including the part concerning traffic safety) has begun to be considered. According to that, an Action Plan has been established for the activities carried out by the Republic of Serbia in the process of European integration within the plan for full harmonization of regulations in the field of motor vehicles, offroad mobile machinery, motorcycles and agricultural and forestry wheeled tractors. This plan defines the following segments:

- a list of EU Regulations that need to be transposed into the legislative system of the Republic of Serbia has been defined
- the Competent body for the harmonization of regulations have been determined, as well as an organizational unit within the Competent body and contact persons
- for each EU Regulation, the legal basis for the adoption of regulations implementing harmonization is given, as well as the regulation in the Republic of Serbia
- planned deadlines for harmonization of regulations are defined
- As a result of harmonization, the deadlines for the adoption of harmonization are given, as well as draft regulations, compliance tables and the Opinion of the European Commission.

Road Traffic Safety Agency has been defined as the Competent body for the implementation of the Action Plan, with the names of EU Regulations and planned deadlines for harmonization. The originally scheduled deadlines (end of 2017 and end of 2018, depending on the regulations) have been changed and moved several times for various reasons. The current situation with the deadlines for harmonization with EU regulations is unknown.

4. CONCLUSIONS

The Republic of Serbia's strong commitment to be an equal member of the European Union unequivocally indicates that the harmonization of all legislation is an obligation that needs

to be implemented before final accession. Having in mind the extension of the harmonization deadlines envisaged by the Action Plan, it becomes quite clear that in order to achieve the harmonization of the legislation of Serbia with the EU, it is necessary to significantly involve the competent state institutions. In the case of the part of regulations concerning traffic safety and homologation of vehicles, equipment and parts, the authority is fully assigned to the Road Traffic Safety Agency, so it is rightly expected to implement the complete procedure envisaged by the Action Plan both in organizational and personnel terms. Therefore, it is necessary to significantly engage scientific and professional institutions and staff, who with their knowledge and experience can greatly contribute to the acceleration of the entire process. All necessary analysis of the current situation, as well as optimal solutions for harmonization of regulations that take into account all the specifics of a particular matter can be significantly accelerated with the contribution of the scientific and professional public. However, the area of traffic safety and vehicle homologation, as part of the entire legislation of the Republic of Serbia, has too many specifics for the entire harmonization process to be implemented in a short period of time. Therefore, for the next period, it is crucial to define, as far as possible, realistic deadlines for the implementation of the Action Plan. It is estimated that a lot of time and engagement is needed in order to reach the final harmonization of regulations and implementation in the Republic of Serbia.

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