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DIGITALEUROPE comments on the second draft Implementing Act on the Automated Driving System

Executive summary

DIGITALEUROPE is keen to remain a constructive partner of the Commission in its preparation of a new Implementing Act on the Automated Driving System (ADS). The second draft of the Act is, in many ways, an improvement over the first. We, however, believe that multiple changes are still necessary for the legislation to be a meaningful step towards safer transportation in Europe. We outline our comments below.

General Comments

▶ **Definitions:** The second draft of the Act improved the definition of the scope. Yet, further clarifications are necessary.

- For example, it fails to sufficiently define the scope of a “*fully automated vehicle* [...] *with regard to their automated driving system*”. Use of a more robust definition, for example one having regard to SAE levels, is necessary for the legislation to be actionable and for industry to be able to swiftly implement it.
- The Commission clarified that “*manufacturer*” is to be defined in this regulation as per the EU Market Surveillance Regulation 2018/858¹, which envisages a range of entities being able to submit a vehicle for type-approval. We welcome this decision as it represents a step in the right direction.

There are however still six remaining references to “vehicle manufacturer” in the text. Consistent with the Commission’s

¹ EU Market Surveillance Regulation 2018/858, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R0858> [Accessed 22/11/2021]

intended approach, the word “vehicle” should now be stricken from those references to align with the existing EU definition.

- ▶▶ **Reference to UNECE Regulation:** Recital 2 of the draft Implementing Act refers to the UNECE Regulation 157 and its requirements on Automated Lane Keeping Systems (ALKS) as largely covering the development of implementing legislation. Such provisions should rather be seen as a partial solution, as per the UN Regulation itself, “[it] is the first regulatory step for an automated driving system [...] in traffic”², not a complete one.

We suggest striking Recital 2 and changing Recital 3 to “*There is no UNECE requirements established for fully automated vehicles to be used without a driver in any environment. It is therefore necessary to develop EU harmonised requirements on the approval of fully automated vehicles to ensure the internal market for these vehicles.*”



Annex I

- ▶▶ **Relationship to existing and national legislation:** At no point do the Act or Annexes clarify how the Act will work in practice in Member States such as France and Germany, which already intend to have Level 4 Automated Vehicle (AV) Frameworks in place in 2022 for ride hailing and shuttles.

The Commission should include language describing the separation of powers between the Commission and its Member States in setting AV operating requirements and include specific guidance on the interpretation of this Act at a domestic level. Failing to include such language risks confusion for certification authorities, as to whether they should follow domestic AV requirements, EU requirements, or both. This poses a serious challenge to the coherence of the EU Single Market. It requires urgent action to ensure industry can effectively implement safe Automated Driving solutions.



Annex II

- ▶▶ **Definition of Automated Driving System:** According to Annex II of the second draft of the Act, an ADS is defined as “*the hardware and software*

² Introduction to the UN Regulation 157, p. 4. Available at: <https://unece.org/sites/default/files/2021-03/R157e.pdf> [Accessed 17/11/2021]

that are collectively capable of performing the entire DDT on a sustained basis”³.

Again, the need for clearer and more technically precise definitions is evident. The above description is befitting of an Advanced Driver Assistance System (ADAS), which may be *capable of performing* Dynamic Driving Tasks (DDTs) on a sustained basis, whereas an ADS should be *responsible for* such actions. Referring to already-established technical descriptions, such as SAE levels, would help.

- ▶ **Safety hazardous error targets:** We propose provisions in this respect focus on how manufacturers shall demonstrate that an acceptable consideration of functional and operational safety for the ADS has been done during the design and development processes of the ADS and that the measures put in place by the manufacturer will guarantee that the ADS is free of unreasonable safety risks to vehicle occupants and other road users during the vehicle lifecycle (design, development, production, field operation, decommissioning).
- ▶ **Time-To-Collision (TTC):** On the TTC equations proposed in the second draft Implementing Act, we propose that the language below be added to the Annex, following the section describing the TTC values:

“If the manufacturer uses safety metrics and/or values that differ from those defined in x.x.x, x.x.x. and x.x.x.x.x., the manufacturer must document its safety performance metrics and inherent assumptions on the basis of systematic safety validation assessments included in its system description.”

If there is a deviation from the values, then the Type-approval authority should be, as a matter of course, the one taking the ultimate decision on approving any deviation or not.

- ▶ **Requirement on operational manuals:** The safe operation of the vehicle is ensured by the ADS, not by a human; an operation manual for the user is, therefore, not needed for the safe operation of the vehicle and should not be in the scope of the type-approval process.
- ▶ **Human Machine Interface:** The Annex II states that “*The ADS shall provide means for vehicle occupants to call a remote operator through an acoustic and a video interface*”⁴. We find this requirement difficult to implement given the privacy issues it may cause.

³ Point 1.x of Annex II to the second draft Implementing Act on the Automated Driving System

⁴ Points 7 and 8 of Annex II to the second draft Implementing Act on the Automated Driving System

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