

Discussion document on ‘obsolete’ transitional provisions

The treatise reproduced below was prepared by the experts from Italy and the Netherlands in order to initiate a general discussion on the issue of proposing deletion of obsolete transitional provisions for previous series of amendments, by experts of subsidiary bodies of WP.29, when proposals for new series of amendments are submitted.

In their capacity as co-chairs of TF-HS, the experts of Italy and the Netherlands encountered this dilemma, by chance, whilst drafting proposals for a new series of amendments to one of the existing UN Regulations (in this case UN Regulation No. 48, ref. ECE/TRANS/WP.29/GRE/2018/44).

I. Issue

In the document “*Draft General Guidelines for United Nations regulatory procedures and transitional provisions in UN*” (ref. ECE/TRANS/WP.29/2017/107), in section VI “*General guidelines on administrative/transitional provisions*”, under item E.3. “*Miscellaneous*”, paragraph 45 reads as follows:

45. When considering amendments to UN Regulations, the subsidiary bodies of WP.29 shall bear in mind:
- (a) When several amendment proposals to the same version of a UN Regulation are under consideration, these proposals should, wherever possible, be grouped together into the same amendment;
 - (b) Before submitting proposals for amendments to UN Regulations, the experts of the subsidiary bodies are required to study this document carefully and indicate the amendment procedure they want to propose;
 - (c) When submitting proposals for a new series of amendments with transitional provisions, the experts of subsidiary bodies shall propose to delete obsolete transitional provisions for the previous series of amendments, if applicable; and
 - (d) The issue of transitional provisions, especially their appropriateness for series of amendments or for Supplements, shall always be carefully examined to ensure that the principles referred to in paragraphs 3 and 4 above are fully respected.

The issue at hand finds its particular origin in subparagraph (c), where it is stipulated that obsolete transitional provisions for the previous series of amendments shall be deleted.

II. Discussion

The core of this issue can actually be simply reduced to the following key question: “When can transitional provisions be regarded as obsolete?”

On the one hand, it can be argued, in a strict sense, that when all the dates mentioned in the previous transitional provisions (either directly or indirectly, by means of

indicating a certain number of months) lie in the past, that those old transitional provisions are no longer directly applicable, since all indicated dates are already passed.

Hence, it could be argued that effectively such old transitional provisions have become “obsolete” and, subsequently, shall be deleted.

On the other hand, it can also be argued, in a more practical sense, that such old transitional provisions as described above may still serve a purpose. In this sense it is worthwhile to mention that retaining old transitional provisions could be useful, for e.g. having a quick reference in case of application for extensions of approvals to previous series of amendments.

In addition, something similar may actually be argued in view of the latest revision of the “1958 Agreement”, which provides possibilities for Contracting Parties to apply so-called “earlier versions” (or “former versions”) of UN Regulations.

Hence, it could alternatively be argued that such old transitional provisions have not become “obsolete” and, subsequently, shall not be deleted.

Finally, there also might be an overarching legal question, whether such old transitional provisions, contained in older versions of an UN Regulation, would actually still be existence once they are intentionally deleted.
