

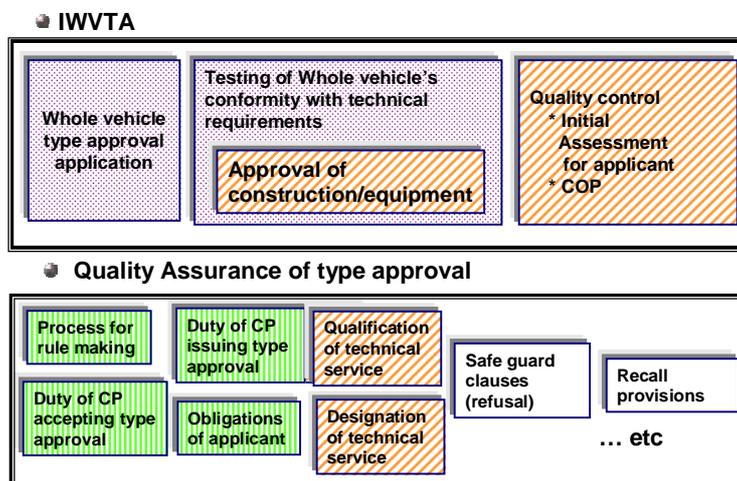
UNECE WP.29 INFORMAL GROUP
ON THE FUTURE DIRECTION FOR HARMONISATION OF VEHICLE REGULATIONS
UNDER THE 1958 AGREEMENT (IWVTA)

**LIST OF ITEMS RELATING TO THE QUALITY ASSURANCE OF TYPE APPROVAL
TO BE ADDRESSED IN THE ROADMAP FOR THE REVIEW OF THE 1958 AGREEMENT**

BACKGROUND:

1. At its 150th session in March 2010, UNECE WP.29 agreed on the setting up of an informal group on the future direction for harmonization of vehicle regulations of the 1958 Agreement (ECE/TRANS/WP.29/1083 para. 62) and adopted the terms of reference and rules of procedure of this informal group (WP.29-150-25). These terms of reference specify that the informal group shall give particular attention to the procedures for developing, amending and adopting technical regulations for motor vehicles, and their implementation by Contracting Parties, and also to the conditions for granting type approvals and their mutual recognition. Other elements to be included for consideration are the methods for conformity assessment and certification procedures, including the responsibilities and competence of involved parties and aspects related to enforcement, such as ensuring conformity of production, market surveillance, safeguard measures and dispute settlement procedures.
2. At the first meeting of the informal group, held on 12 March 2010, the Chairman invited delegates to review the Terms of Reference and suggested to add elements if deemed necessary by the Contracting Parties. He also introduced the structure of the working group with special attention to IWVTA (chaired by Japan), Quality Assurance of type approval (chaired by EC) and Revision of the 58 Agreement (chaired by Mr. Gauvin).
3. Japan presented at the first meeting of the informal group a reworked version of slide 7 of the document WP29-149-11, illustrating the items that should be addressed by the informal group under the respective headings IWVTA and quality assurance of type approval. (see figure below)

**Items to be addressed in the IG on future direction for
harmonization of vehicle regulations under the 1958 Agreement**



: Covered by the current the 1958 Agreement
 : Modified for the new mutual recognition system
 : Covered by the current the 1958 Agreement but partially need to be amended
 : Newly added

OBJECTIVE:

4. The terms of reference of the informal group on the future direction of the 1958 Agreement specify that *“the informal group shall, as a first step, make an inventory of the elements which it considers should be addressed in a review of the 1958 Agreement, taking into account contributions by Contracting Parties and non-governmental organisations, and establish a roadmap for addressing these elements as a recommendation to WP.29”*.
5. The objective of the current document is to contribute to this first step by establishing, based upon the above background information and taking into account further contributions which members of the informal group may wish to submit, an inventory of the items that should be addressed by the informal group under the heading “Quality assurance of type approval”, with the view of establishing a roadmap for developing specific recommendations to WP29, in accordance with the Terms of Reference of the informal group.

PREREQUISITES:

6. The starting point for this review is defined by the objectives specified in §.1 of the Terms of Reference, i.e. **improving the functioning and reliability of the 1958 Agreement, and thus ensuring that it remains the key international framework for the harmonisation of technical regulations in the automotive sector.**

Within this context it is also useful to recall the introductory consideration in document ECE/TRANS/WP.29/1059¹ stating that: *“The credibility of the type approval system and the Regulations annexed to the 1958 Agreement relies upon the transparent application of harmonized standards and the integrity of the Contracting Parties and their Approval Authorities”*.

Consequently, the review process has to ensure that the two main principles of the 1958 Agreement are maintained and strengthened: a transparent procedure for establishing and applying the technical requirements for the type approval of vehicles and the conditions for mutual recognition of type approvals issued based on these requirements. As a result, the quality assurance of the type approval process will - on the one hand - be influenced by the way technical requirements are developed, adopted and implemented and on the other hand will have to contribute to enhancing the concept of mutual recognition of such type approvals.

7. The above considerations lead to the conclusion that the quality assurance of type approval touches also upon the process of rulemaking, and has also to give due consideration to ensuring that the necessary procedures are put in place to address type-approval related problems which may hamper the proper functioning of the mutual recognition process. Evenly important is that it has to take into account the role and responsibility of the involved actors: manufacturers, Contracting Parties and their Approval Authorities and technical services. Some of these aspects are to a greater or lesser extent already addressed by current provisions of the 1958 Agreement, but these may need to be reviewed to ensure or to enhance their effectiveness and robustness. In addition, other aspects which are not yet covered by the 1958 Agreement need to be addressed to complement the current provisions under review, with the aim to establishing a coherent and complete framework for the proper functioning of the type approval and mutual recognition procedure under the Agreement.

¹ Resolving interpretation issues and requirements for the Technical Services in the framework of the 1958 Agreement

8. In establishing an inventory of items to be addressed under the heading “quality assurance of type approvals”, due account has to be given to the parallel work that will be undertaken by the informal group to develop the International Whole Vehicle Type Approval (IWVTA) concept. It can be anticipated that this concept, once elaborated, will have a substantial impact on the basic principles governing the current procedures and processes for rulemaking, type-approval and mutual recognition under the 1958 Agreement.
9. The development of the IWVTA concept can only be successful if its scope includes all requirements deemed necessary to address adequately all relevant aspect related to road safety, environmental protection and energy saving, for the vehicle categories it will cover and that these requirements are uniformly and consistently applied by Contracting Parties. The prerequisite of a sufficient coverage to ensure an adequate level of safety, environmental and energy performance of the vehicles concerned, will necessitate a careful assessment as to whether the current Regulations of the 1958 Agreement would (still) be suitable for this purpose, both in terms of their content and their scope of application, and whether further Regulations would need to be developed to ensure that all relevant safety aspects and environmental and energy performance criteria for the vehicles concerned will be covered by the IWVTA.
10. In addition, ensuring a uniform application by Contracting Parties of the Regulations covered by the IWVTA would also require WP.29 to reconsider some of the basic principles relating to the current process of rulemaking under the 1958 Agreement and its application, such as the freedom for Contracting Parties to adhere or not to the Regulations and their consecutive amendments, either in full or only partially, and how the problems associated with transitional provisions and different regulatory options included in some of the Regulations can be resolved.
11. Another prerequisite related to the need for a uniform interpretation and application of the Regulations is that the type approval procedures applied by Contracting Parties are sufficiently harmonised to avoid the risk of unfair competition and undermining the concept of mutual recognition. This prerequisite will require addressing important questions related to the concept of self-certification, the competence and independence of technical services, the need to complement the concept of conformity of production with adequate surveillance of vehicles after they have been placed on the market, with associated procedures for safeguard measures, recall provisions, arbitration and dispute settlement procedures.

OUTLINE INVENTORY OF QUALITY ASSURANCE ISSUES TO BE ADDRESSED:

12. This document aims at outlining a draft inventory of issues that would need to be addressed by the informal group on the future direction of the 1958 Agreement, and at providing a non-exhaustive list of the current provisions and basic principles of the 1958 Agreement eligible for review, together with some considerations as to the need for their review. It will also indicate a number of areas not yet covered by the Agreement, but which are considered to provide a potential for enhancing the functioning of the Agreement. The document does not aim at presenting already possible solutions for reviewing current issues and addressing new ones, but may provide, where available and suitable, references and examples on how these issues have been or will be addressed in the EU technical harmonisation legislation for motor vehicles. This approach of providing references to and examples of EU legislation is considered to be in line with the outcome of the 1st meeting of the informal group where it was agreed that the informal working group would start working on the development of the IWVTA concept by using the EU WVTA concept as a reference.

13. For the sake of coherence and easy reference the outline inventory of issues to be addressed under the heading “Quality control of type approval” will be structured in accordance with the basic diagram represented in section three, by subdividing it into the following main headings:

1) Process of Rulemaking:

Under this heading aspects related to the process of developing, amending and adopting technical regulations for motor vehicles under the 1958 Agreement, and the rights and obligations for Contracting Parties arising from these, will be listed for further consideration by the informal group for the purpose of establishing an inventory and roadmap of issues to be addressed in the review of the 1958 Agreement.

2) Procedure for type approval:

This heading is intended to cover aspects relating to the procedure for type approval, including the application process, the conduct of the type-approval procedure with related testing and inspection, the granting of type-approvals and issuing of related certificates and marks, and the duties incumbent on the parties involved in the type-approval process, such as ensuring conformity of production.

3) Duties incumbent on Contracting Parties issuing and accepting type-approval

4) Qualification, designation and notification and duties of technical services

5) Implementation and enforcement: covering issues such as market surveillance, safeguard measures, recall and dispute settlement procedures.

PROCESS OF RULEMAKING:

14. The 1958 Agreement as such contains a limited number of provisions addressing the criteria for establishing new Regulations.

Article 1.1 specifies that “*Contracting Parties shall establish (...) Regulations for wheeled vehicles, equipment and parts which can be fitted and/or be used on wheeled vehicles*” and that “*where necessary the technical requirements will include alternatives and when possible they will be performance oriented and include test methods*”.

This approach is confirmed in Article 2.2 which stipulates that “*the Regulation shall cover (...)*

(b) technical requirements, which if necessary may include alternatives;

(c) Test methods by which any performance requirements are to be demonstrated.”

The informal group is invited to consider:

- whether the provisions of the 1958 Agreement in relation to the **criteria for establishing of new Regulations** are sufficiently clear and detailed or whether there would be a need for addressing these in the review of the 1958 Agreement to provide further detail and precision.²

² In this context reference could be made to the more explicit provisions in the 1998 Agreement with regard to the criteria for technical regulations (article 4) and the establishment of new global technical regulations (article 6.3), addressing issues such as explaining and considering the objectives of a proposed new regulation, consideration of technical and economic feasibility, identification of any known existing relevant international voluntary standards,

- whether, as a matter of principle and for the sake of ensuring and promoting mutual recognition, it would be appropriate to maintain in these criteria **the possibility of including alternatives in the technical requirements**.

15. The procedure for amending existing Regulations annexed to the 1958 Agreement is described in Article 12. The provisions in this Article do, however, not contain any specific criteria for amending existing Regulations, save for the provision in paragraph 1 that “*Where necessary an amendment may include the existing requirements as an alternative*”.

Similar to the considerations with regard to the criteria for establishing new Regulations, the informal group is invited to consider:

- whether the provisions of the 1958 Agreement in relation to the **criteria for amending existing Regulations** are sufficiently clear and detailed or whether there would be a need for addressing these in the review of the 1958 Agreement to provide further detail and precision.
- whether, as a matter of principle and for the sake of ensuring and promoting mutual recognition, it is appropriate to maintain in these criteria **the possibility of including the existing requirements as an alternative**.
- associated questions such as:
 - the need for stocktaking/consolidation/codification of existing Regulations, amendments and corrections ?
 - the possible need for splitting existing Regulations covering a multitude of different topics into separate Regulations?
 - clarification on how to deal with amendments/corrections to existing Regulations for type approvals issued based on the existing Regulation?

16. The procedure for adopting new Regulations or amendments to existing Regulations is addressed by detailed provisions in the 1958 Agreement, covering issues in relation to voting in the Administrative Committee (required quorum and majority – see Appendix 1, Articles 5 and 6), notification of adoption to Contracting Parties (Article 1.2), objection/disagreement by Contracting Parties (Article 1.2 and 1.3), and entry into force (Article 1.4).

While these provisions may prove to be sufficient to cover for most of the regulatory needs, they could constitute a limitation in case an urgent regulatory need would arise. In Article 4 of Appendix 1 it is provided that the Committee shall be convened whenever a new Regulation or an amendment to an existing Regulation is required to be established. In reality the Committee is convened at the same frequency as the WP.29 meetings, i.e. three times a year.

the need for establishing high levels of safety, environmental protection, energy efficiency, the need for recommending a minimum period of lead time, etc.

The informal group is invited to consider:

- whether the provisions of the 1958 Agreement in relation to the procedure for the adoption of new Regulations and amendments to existing Regulations are sufficient or whether there would be any issue with regard to the **procedure for voting, notification, objection and entry into force** that needs to be improved and addressed in the review of the 1958 Agreement.
- in particular, whether, as a matter of principle and for the sake of ensuring mutual recognition based on the IWVTA concept, it would be appropriate to maintain in these provisions the **possibility for a Contracting Party to object or to disagree** with an adopted new Regulation or adopted amendment to an existing Regulation and as a consequence this adopted Regulation or amendment would not enter into force for such Contracting Party.
- whether there would be a need to cover in the 1958 Agreement a special, **accelerated adoption procedure** in case an urgent regulatory need would arise.

17. Quality of rulemaking:

ECE/TRANS/WP.29/1059³ states in § 2 of its introduction that “*Ideally, no interpretations should be necessary in the application of Regulations and it is proposed that **new measures be adopted by the World Forum for Harmonisation of Vehicle Regulations (WP.29)- to ensure that only high quality and unambiguous texts are adopted in the future. New measures are also needed to address the on-going problem of interpretation with existing regulations.***”

The informal group is invited to consider:

- whether, in the context of the review of the 1958 Agreement, it would be appropriate to include within the inventory and the roadmap the issue of **quality of rulemaking**, with a view to **develop measures** and commonly agreed criteria to **guarantee an acceptable level of safety, environmental protection or energy performance** and to ensure that only **high quality and unambiguous texts are adopted** and **problems of interpretation of existing Regulations** are addressed.
- which of the provisions of ECE/TRANS/WP.29/1059, and/or any other elements – either existing or new, could serve as a basis for developing the above measures as part of the review of the UNECE 1958 Agreement.

18. Rights and obligations for Contracting Parties arising from the adoption of new Regulations and amendments to existing Regulations.

The right for Contracting Parties to object to an adopted Regulation (or amendment to a Regulation) and as a result of that objection the Regulation or the amendment to the Regulation shall not enter into force for that Contracting Party has already be raised under point 16 above.

³ Resolving interpretation issues and requirements for the Technical Services in the framework of the 1958 Agreement

In the light of the IWVTA concept, and the envisaged mutual recognition based on it, this right by a Contracting Party to object to an adopted Regulation or amendment to an existing regulation may need to be reassessed in terms of its suitability and sustainability (Article 1.2 and 1.3, as well as Article 11.3).

Within the same IWVTA context and objective of mutual recognition, the right for a new Contracting Party wishing to accede to the 1958 Agreement to declare that it will not be bound by certain or any of the Regulations annexed to the 1958 Agreement (Article 1.5), should be included in this suitability and sustainability assessment.

The question of suitability and sustainability should also be extended to the right for a Contracting Party, subject to notification, to cease applying a Regulation and issuing approval to such Regulation (Article 1.6), and for a Contracting Party to start applying a regulation at a later stage (Article 1.7).

The informal group is invited to consider:

- whether, in the context of the review of the 1958 Agreement and the aim of establishing mutual recognition of vehicle type approvals based on the IWVTA concept, a **re-assessment of the different above mentioned rights and obligations for Contracting Parties arising from an adopted Regulation or amendment to an existing Regulation** would be appropriate, and in which way these rights and obligations could be improved to support a better and wider application of the Regulations annexed to the 1958 Agreement.

PROCEDURE FOR TYPE-APPROVAL:

19. The Terms of Reference specify that “*the informal group shall give particular attention to (...) the conditions for granting type approvals and their mutual recognition*” (see point 1 above). This raises the question of principle as to whether it would be **appropriate**, also in the context of the envisaged development of mutual recognition based on IWVTA, **to continue to accept other administrative procedures alternative to type approval**, as mentioned in Article 1.1 of the 1958 Agreement.⁴

At the end of the 1st paragraph of Article 1.1 it is stated that “*Conditions for granting type approvals and their reciprocal recognition will be included for use by Contracting Parties who choose to implement Regulation through type approval*”. However, the 1958 Agreement does not contain any provisions setting out how this concept should be applied by Contracting Parties choosing not to use type-approval to implement the Regulations annexed to the 1958 Agreement. In fact, the main obligations of the 1958 Agreement as they are laid down in Articles 3, 4 and 5 are referring to “*Contracting Parties applying a Regulation through type approval*” and as such can be understood to be construed as only applicable to contracting Parties applying the Regulations through type-approval and not to any Contracting Party that would apply the Regulations through other administrative procedures alternative to type-approval (such a self-certification).

⁴ See also the note submitted by the Chairman of the informal group for the second meeting of the informal group with the title "Review of the 1958 Agreement" and the comments related to Article 1

Within the same context, the provisions of Article 2 specifying the obligations of Contracting Parties may need to be reviewed and clarified in relation to the terminology used by referring to “*Each Contracting Party applying Regulations largely through type approvals...*”⁵

The informal group is invited to consider:

- whether, in the context of the review of the 1958 Agreement and the aim of establishing mutual recognition of type approvals based on the IWVTA concept, it would be **appropriate to maintain** within the provisions of the Agreement a **reference to other administrative procedures alternative to type-approval (such a self-certification)**, and
- in the light of the above assessment, the need to reformulate the references to “*a Contracting Party applying a Regulation through type approval*” in Articles 2 to 5.

20. Application procedure to be followed for type approval:

The 1958 Agreement as such does not contain any provisions specifying the procedure to be followed for type approval. The provisions relating to application for approval are laid down in each of the Regulations annexed to the 1958 Agreement. In principle these provisions address questions like who has to submit the application for type approval (the manufacturer or his accredited representative – without specifying further details) and specify the documents that have to accompany the application. In addition, they specify in general, but not systematically and coherently, that a vehicle or parts, representative of the vehicle type or part to be approved, shall be submitted to the Technical Service conducting the approval tests and that the competent authority shall verify the existence of satisfactory arrangements for ensuring effective control of the conformity of production before type approval is granted.

In response to the outcome of the 1st meeting of the informal group, where it has been agreed to start considering the IWVTA concept based on the EU WVTA legislation, a document has been prepared and submitted by the representative of the European Commission setting out the application procedure to be followed for type-approval under the applicable EU legislation⁶.

The informal group is invited to consider:

- whether, in the context of the review of the 1958 Agreement and with the aim of establishing mutual recognition of type approvals based on the IWVTA concept, it would be appropriate **to include in the main body of the 1958 Agreement provisions governing the main principles to be applied for the application for type approval**, with a view to ensure their consistent application to all Regulations annexed to the 1958 Agreement and to enable a simplification of the Regulations themselves by avoiding the repetition of each of these main principles in every Regulation, and by limiting the application provisions to be specified in each Regulation to the specificities of the equipment or parts covered by that Regulation.
- whether the approach followed in the EU legislation for the procedure to be followed for the type-approval of vehicles could serve as a basis for developing the application procedure for the IWVTA concept.

⁵ See also the comments related to Article 2 in the note "Review of the 1958 Agreement"

⁶ See the document submitted by the representative of the European Commission for the second meeting of the informal group with the title "EU type-approval procedure for vehicles"

21. Conduct of the type-approval with related testing and inspection:

The 1958 Agreement as such does not contain any provisions specifying how the type approval procedure with related testing and inspection has to be conducted. Article 2 only states that a Contracting Party “*shall grant the type approvals and approval markings described in any regulation, provided that it has the technical competence⁷ and is satisfied with the arrangements for ensuring conformity of the product with the approved type*”.

In response to the outcome of the 1st meeting of the informal group, where it has been agreed to start considering the IWVTA concept based on the EU WVTA legislation, a document has been prepared and submitted by the representative of the European Commission setting out – amongst others - the procedures to be followed with respect to type-approval under the applicable EU legislation. The details of these type-approval procedures can be found in Annex V of this document⁵ and in particular in section 1 with the heading “type-approval process”.

The informal group is invited to consider:

- whether, in the context of the review of the 1958 Agreement and with the aim of establishing mutual recognition of type approvals based on the IWVTA concept, it would be appropriate **to include in or append to the 1958 Agreement provisions governing the procedures to be followed with respect to type approval**, with a view to complement the more specific and technical provisions on testing methods specified in each of the Regulations annexed to the 1958 Agreement.
- whether the approach followed in the EU legislation for the procedure to be followed with respect to type-approval could serve as a basis for including or appending such provisions to the 1958 Agreement.

22. Testing required for type-approval:

The 1958 Agreement does not contain any specific provisions related to the testing required for type-approval (appendix 2 refers only to tests to be carried out in relation to conformity of production). The Regulations annexed to the 1958 Agreement provide detailed requirements about the specific testing procedures that need to be carried out for demonstrating compliance with the requirements of the Regulation concerned.

The EU legislation on the type-approval of motor vehicles specifies explicitly⁸ that compliance with the relevant technical requirements for type-approval shall be demonstrated by means of appropriate tests performed by technical services, and that the test procedures, the specific equipment and tools necessary to perform these tests shall be described in each of the regulatory acts⁹. It also provides the possibility of virtual testing based on a method which should provide for the same level of confidence in the results as a physical test (see point 23 below).

⁷ The issue of technical competence will be considered under the heading “Qualification, designation and notification and duties of technical services”

⁸ See Article 11.1 of Directive 2007/46/EC

⁹ A regulatory act is defined as a EU Directive or a UNECE Regulation annexed to the Revised 1958 Agreement

Document ECE/TRANS/WP.29/1059 addresses, in the context of type approval testing, the issue of worst case selection¹⁰ by stating that the approval authority will normally practice “worse casing” , i.e. by “*establishing the variant or version specification from the type specification that, when tested represents the type to be approved under worst conditions.*”

Another important element for the reliability of the type-approval procedure is the level of confidence between the type-approval authority and the technical services it has appointed for carrying out the type-approval testing¹¹. It is therefore important that full transparency and clarity in ensured in the exchange between the type approval authority and the technical services of all information related to the type-approval testing.

Within this context it may be beneficial for the proper functioning of the type-approval procedure under the 1958 Agreement to specify the minimum information that needs to be included in the test report to ensure that the type-approval will be granted on clear evidence demonstrating compliance with all the relevant requirements. The EU legislation on the type-approval of motor vehicles has been recently amended to include requirements concerning the format and the content of the test report. These provisions are included in the document submitted by the representative of the European Commission for the second meeting of the informal group¹².

The guidance document ECE/TRANS/WP.29/1059 provides in its Chapter E that, in addition to the test report to be issued by the technical service, following documents shall be included in the type-approval documentation:

- a record of the worst-case selection and the justification for that selection,
- a record of any significant technical interpretation made, different test methodology applied, or new technology introduced;
- information documents from the manufacturer, properly specifying the type being approved;
- a statement of the conformity of production status, stating the basis of the initial assessment (i.e. assessment by the Approval Authority, ISO 9000 certification, etc.), and the date of the initial and any surveillance assessments;
- the approval certificate.

Guidance document ECE/TRANS/WP.29/1059 provides further that the above documents shall be made available upon request to other type approval authorities within 14 working days. If the issuing type approval authority cannot comply with the request in time, it shall explain why and announce by this deadline when, within the next 28 days it will deliver the requested documents.

The informal group is invited to consider whether, with a view to improve the functioning of the 1958 Agreement, it would be appropriate to:

- **expand the provisions of (article 2 of) the 1958 Agreement to clarify that type-approval shall be based on demonstration of compliance by means of appropriate tests;**
- specify that, for the selection of the type to be tested, **the principle of worst casing shall be applied**, in line with the provisions of ECE/TRANS/WP.29/1059;

¹⁰ Resolving interpretation issues and requirements for the Technical Services in the framework of the 1958 Agreement, Chapter C.

¹¹ See also the comments under the heading “Qualification, designation and notification and duties of technical services”

¹² See the document with the title "EU type-approval procedure for vehicles", Annex V, Appendix 3

- **specify the minimum information to be provided in the test report** the technical services have to submit to the approval authority
- include within the 1958 Agreement the **provisions on type-approval documentation** as specified in Chapter E of guidance document ECE/TRANS/WP.29/1059

23. Self-testing and virtual testing:

The relevant EU legislation governing the type approval of motor vehicles provides for the possibility of self-testing (where the manufacturer conducts the tests required for type-approval, which implies his designation as technical service¹¹) and virtual-testing (using computer simulations instead of conducting physical tests).

Detailed provisions enabling self-testing by manufacturers have been included in the EU framework directive 2007/46/EC on the type-approval of motor vehicles, and more precisely in its updated Annex V, which is reproduced in the document submitted by the representative of the European Commission for the second meeting of the informal group with the title “EU type-approval procedure for vehicles”.

With regard to virtual-testing, Annex XVI of framework directive 2007/46/EC as amended by Commission regulation (EU) No 371/2010, lays down the specific conditions required from virtual-testing methods and lists the regulatory acts for which virtual testing methods may be used by a manufacturer or a technical service.

The informal group is invited to consider:

- whether, in the context of the review of the 1958 Agreement and with the aim of establishing mutual recognition of type approvals based on the IWVTA concept, it would be appropriate to **include in the 1958 Agreement specific provisions enabling self-testing and virtual testing**.
- whether the approach followed in the EU legislation for self-testing and virtual testing could serve as a basis for including or appending such provisions to the 1958 Agreement.

24. New technologies:

Although the 1958 Agreement does not address the issue of new technologies, document ECE/TRANS/WP.29/1059¹³ acknowledges that “*with the recent rapid development in advanced vehicle systems, the new technology issues could become more significant in the near future. It is recognized, however, that no specific guidance is available to help Approval Authorities reach the robust decisions that are expected.*”

Chapter B of document ECE/TRANS/WP.29/1059 sets out the scope and procedure to consider special applications for dealing with these new technologies. These procedures are mainly geared to develop and adopt a special amendment to an existing Regulation, restricted to a single type of vehicle, equipment or part.

¹³ Resolving interpretation issues and requirements for the Technical Services in the framework of the 1958 Agreement, paragraph A, 1st paragraph.

This special amendment procedure has to be based on evidence submitted by a Contracting Party, including – amongst others – “*the description and results of the tests demonstrating that, by comparison with the requirements of the Regulation from which exemption is sought, at least an equivalent level of safety and environmental protection is ensured*”.

In line with the above principles, the EU legislation on the type-approval of motor vehicles, systems, components and separate technical units intended for such vehicles, is specifying the procedure to be followed for the type-approval for vehicles with new technologies.¹⁴

The informal group is invited to consider:

- whether, with a view to improve the functioning of the 1958 Agreement, it would be appropriate to **include in the 1958 Agreement specific provisions to deal with new technologies**, based on the special amendment provisions of Chapter B of document ECE/TRANS/WP.29/1059;
- whether the approach followed in the EU legislation for **type-approval of new technologies** could serve as a basis for including similar provisions in the 1958 Agreement.

25. Granting of type-approvals, amendments, refusal or withdrawal, and validity:

Article 2 of the 1958 Agreement stipulates that Contracting Parties shall grant type-approvals, subject to two conditions. The Contracting Party has to have the technical competence and must be satisfied with the arrangements for ensuring the conformity of the product with the approved type as set out in Appendix 2 (Conformity of Production). If the above-mentioned are not complied the Contracting Party shall refuse the type-approvals.

Article 5 describes the administrative procedures how each Contracting Party should notify to other Contracting Parties the list of products for which it has either refused to grant type-approval or for which it has withdrawn the type-approval. It also specifies that - upon request by a competent authority of another Contracting Party – a Contracting Party has to send a copy of all the relevant information upon which it has based its decision to grant, refuse to grant or to withdraw a type-approval.

The Agreement itself does however not clarify that - in addition to the two conditions mentioned in its Article 2 – the type for which approval is sought has to successfully pass the tests and inspections required by the applicable Regulations to demonstrate compliance with the relevant technical requirements and that for that purpose evidence has to be provided in the form of a test report issued by a technical service. (See also point 22 above). This condition is in principle mentioned in each of the Regulations annexed to the Agreement, but as it concerns a general and common principle, it may be useful to have it specified in the relevant Article of the 1958 Agreement as well. The same reasoning applies with regard to the procedure for the notification of type-approvals granted or refused or withdrawn. Again, it would make sense to have this common procedure spelled out in the main body of the 1958 Agreement.

¹⁴ Directive 2007/46/EC, Articles 20 and 21

Similarly, the Agreement itself does not address the issue of validity and extensions of type approvals granted. This is done in the separate Regulations annexed to the Agreement, but describing these common and general procedures in the Agreement itself would be beneficial in terms of clarity, in particular when the IWVTA concept were to be introduced in the Agreement.

The EU legislation on the type approval of motor vehicles contains specific provisions governing the procedure for issuing and notifying amendments to existing type approvals as well as the termination of the validity of type approvals¹⁵

The informal group is invited to consider:

- whether it would be appropriate to expand the provisions of Article 2 of the 1958 Agreement **to specify all conditions necessary for granting type approval.**
- whether the provisions of Article 5 may benefit from being amended to also include procedures to be followed in the case of **amendments to type-approvals or refusal or withdrawal of type-approvals** and conditions for the **termination of their validity.**
- whether the approach followed in the EU legislation with regard to the amendments to and validity of type approvals can serve as a basis for reviewing and enhancing the provisions of the 1958 Agreement.

26. Conformity of production:

Conformity of production is a cornerstone of the type-approval process. This is explicitly recognised in article 2 of the 1958 Agreement, which states that a Contracting Party shall grant type-approvals “*provided that it (...) is satisfied with the arrangements for ensuring conformity of the product with the approved type as set out in Appendix 2*” and “*that each Contracting Party applying a Regulation (...) shall refuse the type approvals and approval markings covered by the Regulation if the above mentioned conditions are not complied with*”.

In view of the importance of ensuring the conformity of production (CoP), it is essential that the provisions governing CoP are sufficiently clear and robust to ensure their effective implementation. The EU legislation on the type approval of motor vehicles has been recently amended¹⁶ to enhance the CoP requirements (which to a large extent were already based on the provisions of Appendix 2 to the 1958 Agreement).

The informal group is invited to consider whether, with a view to improve the functioning of the 1958 Agreement, it would be appropriate to:

- review the provisions of Appendix 2 to the 1958 Agreement **to enhance the requirements governing the procedures for ensuring conformity of production** and to specify any corrective and restrictive measures to be taken by the type approval authority in case these procedures would not (longer) be respected,
- consider whether the approach followed in the EU legislation with regard to the Conformity of Production can serve as a basis for reviewing and enhancing the CoP provisions of the 1958 Agreement.

¹⁵ See Articles 13 to 17 of Directive 2007/46/EC

¹⁶ Commission Regulation (EU) No 371/2010 of 16 April 2010 replacing Annexes V, X, XV, and XVI to Directive 2007/46/EC.

27. Obligations and rights of the manufactures under the type-approval procedure:

The 1958 Agreement focuses mainly on the role and obligations of Contracting Parties with regard to development of technical regulations and on the conditions for granting type-approval and their mutual recognition by Contracting Parties. It therefore contains almost no provisions imposing directly applicable obligations upon the manufacturers in this process. In fact the Agreement only refers directly to manufacturers in Article 1 in relation to the issue of self-certification (with no further obligations) and in Article 2 (and Appendix 2) with regard to ensuring the conformity of production (see point 26 above). In Article 4 indirect reference is made to the obligation of manufacturer, in case the products of the manufacturers are found not to be in conformity with the approved type.

By contrast, the Regulations annexed to the Agreement contain – in addition to the requirements the product of the manufacturer has to comply with - provisions entailing direct obligations for the manufacturer, for instance with regard to the application for type-approval, the making available of a vehicle for type approval tests, the affixing of the vehicle data plate, the provision of the information package to the technical service, notification of modifications to the approved type and in case of definitively discontinued production, etc. As a large number of these obligations incumbent on the manufacturers are common for all Regulations to the Agreement, it may be beneficial to have these obligations included and clarified in the main body of the 1958 Agreement.

In comparison, the currently applicable EU legislation on the type-approval of motor vehicles contains additional obligations for the manufacturer, which may be even further extended to take account of the EU legislation providing a common framework for the marketing of products and market surveillance. The EU legislation on the type-approval of motor vehicles specifies detailed obligations – as well as rights - for manufacturers with regard to various aspects of the type-approval procedure, such as application for type-approval, ensuring conformity of production, the procedure for dealing with modifications with regard to the vehicle's particulars recorded in the information folder, etc.

One particular point of interest is that under EU legislation, the manufacturer, as holder of a type-approval of a vehicle, has to deliver a **certificate of conformity** to each production vehicle manufactured in conformity with the approved vehicle type. This certificate of conformity issued by the manufacturer was primarily intended to facilitate registration of the vehicle, but also serves as useful documentary evidence of compliance in the context of market surveillance (see below), as it provides a statement from the manufacturer that he takes and bears the responsibility for the conformity of the vehicle with all the applicable requirements of the Regulations according to which the vehicle type has been approved.

In addition, EU legislation providing a common framework for the marketing of products and market surveillance, specifies a number of more general obligations for manufacturers in relation to their responsibility towards protecting the health and safety of the users of their products, such as investigating and keeping a register of complaints, and of non-conforming products and of product recalls, the provision of safety instructions to the users, and taking corrective actions with regard to products already placed on the market which entail a risk for the health or safety of users or for the environment. (This latter issue will be further expanded under the heading market surveillance and recall procedures).

The informal group is invited to consider whether, with a view to improve the functioning of the 1958 Agreement, it would be appropriate to:

- Better **clarify and specify the rights and obligations of manufacturers** in relation to the type-approval procedure and the conformity of production,
- consider the introduction of a **certificate of conformity** to be issued by the manufacturer for his production vehicles, to confirm their conformity with the vehicle type for which the manufacturer holds a type-approval.

DUTIES INCUMBENT ON CONTRACTING PARTIES ISSUING AND ACCEPTING TYPE-APPROVAL:

28. A number of the duties incumbent on the Contracting Party issuing a type-approval has already been addressed above (see in particular points 21, 22, 25 and 26), some of which are based on the guidance provided in document ECE/TRANS/WP.29/1059. This document stresses the need to encourage type approval authorities to communicate with each other to ensure that the Regulations are applied in a consistent and appropriate manner. To that extent it specifies in its Chapter A the particular information exchange procedures to be followed in cases an interpretation issue would arise prior to type approval being granted and subsequent to type approval being granted. In both cases the procedure relies upon an effective interaction and co-operation between with a view to resolve issues by seeking guidance from each other and achieving mutual agreement. In cases where this process would fail, the arbitration procedure in accordance with article 10 of the 1958 Agreement would need to be invoked. (The arbitration issues will be addressed further below under the heading "enforcement").

Furthermore, some articles of the 1958 Agreement contain a number of obligations for the Contracting Parties applying a Regulation, either as issuing Party or as Party accepting type approvals through mutual recognition.

Article 3 addresses the issue of vehicles for which type approvals have been issued by a Contracting Party and **manufactured either in the territory of a Contracting Party applying the Regulations concerned, or in another country designated by the Contracting Party which has issued the type-approval**. In both cases, Article 3 provides that such vehicles "**shall be held to be in conformity with the legislation of all the Contracting Parties applying the concerned regulations to type approval**". While this principle may be understandable and defensible for the former case (vehicle manufactured in the territory of another CP applying the concerned Regulations) it is less evident in the latter case where a vehicle is manufactured in another country designated by the Contracting Party which issued the type-approval. As the criteria and procedure for the designation of such countries are not specified, it is not clear how this extension of the principle of mutual recognition could reliably work in practice, in particular bearing in mind that without further clarification and clear rules for establishing a level playing field, it would be extremely difficult to verify compliance with the Regulations through market surveillance, in particular when the designated country would not be Contracting Party to the 1958 Agreement. This need has also identified by the Chairman of the informal group¹⁷.

Article 4 also contains a number of obligations for Contracting Parties applying a Regulation, but as these are related to market surveillance activities this issue will be addressed further below under the heading "enforcement".

¹⁷ See the note submitted by the Chairman of the informal group for the second meeting of the informal group with the title "Review of the 1958 Agreement" and the comments related to Article 3

Article 5 lays down the notification obligations of the Contracting Parties applying a Regulation, with regard to type approvals issued, refused or withdrawn. It specifies in particular that upon receiving a request from a Contracting Party applying the Regulation, the issuing Contracting Party shall send forthwith to the requesting authority all relevant information. As already outlined in point 22 above, it could be beneficial for the sake of clarity to make this provision more specific by extending it with the details provided in Chapter E of guidance document ECE/TRANS/WP.29/1059.

The informal group is invited to consider:

- whether it would be appropriate to expand the provisions of the 1958 Agreement **to specify the procedure for exchange of information and for consultation between Contracting Parties in case interpretation would arise either prior or subsequent to type approval being granted**, by introducing the principles and procedures specified in Chapter A of Guidance document ECE/TRANS/WP.29/1059.
- whether for the purpose of facilitating information exchange between Contracting Parties it would be desirable and feasible to set up a **data storage and retrieval system** (to be addressed by the DETA informal group?)
- whether the provisions of Article 3 may benefit from being amended to clarify the **criteria and procedures to be followed for a Contracting Party to designate another country** (not being a Contracting Party applying the Regulations concerned) **in which territory vehicles are manufactured for which that Contracting Party has issued the type-approval**, as well as the criteria according to which such vehicles can be held to in conformity with the applicable Regulations
- whether the provisions of Article 5 may need to be improved by **clarifying the details of the type-approval information that shall be made available upon request**, based on the guidance provided in Chapter E of guidance document ECE/TRANS/WP.29/1059.

QUALIFICATION, DESIGNATION AND NOTIFICATION AND DUTIES OF TECHNICAL SERVICES:

29. The 1958 Agreement only sporadically refers to technical services¹⁸, without defining their role and responsibilities within the type approval process and their relationship with type approval authorities. These shortcomings are to some extent addressed by guidance document ECE/TRANS/WP.29/1059, which provides for a definition of technical services and in its Chapter D specifies the criteria and procedure for their designation and assessment of their skills.

This guidance is to a very large extent based on similar provisions that are included in the EU legislation governing the type approval of motor vehicles. In fact, as technical services are to be entrusted by type-approval authorities of Contracting Parties to carry out the necessary inspections and tests as specified in the applicable Regulations, it is of utmost importance for the reliability and credibility of the type approval system of the 1958 Agreement that only these technical services complying with all the qualifications relating to their competence, skills, experience, independence etc. are entitled to carry out his work. In addition it is also necessary to specify in which cases and under which conditions a manufacturer may be designated as a technical service for carrying out in-house testing and inspections.

¹⁸ Technical services are referred to only twice, and this in appendix 2 to the 1958 Agreement

To that extent Directive 2007/46/EC relating to the type-approval of motor vehicles contains in its Articles 41 to 43 and in the appendices 1 and 2 of its Annex V¹⁹, detailed provisions relating to the assessment and designation of technical services. Moreover, in the context of its efforts to improve the common framework legislation for the marketing of products, the EU has considerably updated and strengthened the criteria to be complied with by conformity assessment bodies to carry out the respective conformity assessment tasks laid down in EU technical harmonisation, including the one on the type-approval of motor vehicles. These updated requirements will be taken into account for the next, forthcoming proposal for amending Directive 2007/46/EC.

The informal group is invited to consider:

- the need to **define**, within the 1958 Agreement, **the role and responsibilities of technical services, as well as the criteria for the assessment of their competence and their designation**.
- the provisions in Chapter D and Annexes 1 and 2 of guidance document ECE/TRANS/WP.29/1059 as a basis for **developing appropriate requirements on technical services within the 1958 Agreement**.
- whether the updated requirements on conformity assessment bodies adopted by the European Union in the context of its framework legislation on the marketing of products could serve as a basis for improving and complementing the criteria for technical services as specified in ECE/TRANS/WP.29/1059.

IMPLEMENTATION AND ENFORCEMENT:

30. In relation to implementation and enforcement issues, the 1958 Agreement contains only a limited number of provisions with regard to **safeguard measures** (Article 4) and **dispute settlement procedure** (article 10).

Under the 1958 Agreement the process for safeguard measures is triggered by finding of non-conformities with the approved types, following which the Contracting Party which has issued the type approval must take the necessary steps to bring the vehicle in conformity and has to inform the other Contracting parties of the steps taken.

The dispute settlement procedure as specified in Article 10 is based on the principle of arbitration, whereby the Contracting Parties in dispute should select by agreement one or more arbitrators for that purpose. In case they would fail to agree within three months on the selection of the arbitrator(s), Article 10 provides the possibility of any of these Contracting Parties to request the Secretary-general to nominate an arbitrator for a decision on the dispute. Article 11 however provides the right to any new Contracting Party to declare, at the time of acceding to the 1958 Agreement, that it does not consider itself bound by Article 10 of the Agreement.

¹⁹ The text of these appendices to Annex V can be found in the document submitted by the representative of the European Commission for the second meeting of the informal group with the title "EU type-approval procedure for vehicles"

Document ECE/TRANS/WP.29/1059 provides in paragraphs A.3 and A.4 some further guidance with regard to the arbitration process outlined in Article 10 of the 1958 Agreement to resolve issues of interpretation between Contracting Parties. This guidance starts from the principle that the primary responsibility remains with the Chairpersons of the subsidiary working parties (GRs) to identify issues where this process is necessary and to put in place measures at the earliest opportunity to resolve the different interpretations. Suitable procedures have to be developed by the Chairperson of the GRs to deal with such issues with the aim to demonstrate to WP.29 that all relevant criteria have been taken into account and respected.

Furthermore, the guidelines provide also a procedure for ensuring that at the end of the arbitration process its results are properly taking into account for a uniform implementation by Contracting Parties within the existing Regulations. Where the issue would not be resolved, steps have to be undertaken to ensure that the issue will be covered through a special amendment procedure for the Regulation concerned.

The EU legislation relating to the type-approval of motor vehicles includes several safeguard clauses aimed at ensuring adequate remedial action in case problems emerge. It provides for a post-market safeguard procedure, laying down the rights and obligations for Member States to react immediately in case they would find **vehicles presenting a serious risk to road safety, the environment or public health**, even if these vehicles would be in conformity of the relevant technical harmonisation requirements.

In addition, the EU legislation provides a specific procedure for remedial action by the authorities in the Member States in case a **vehicle is found not to be in compliance with the approved type**, despite being accompanied by a certificate of conformity issued by the manufacturer and carrying the type-approval marks.

In addition, the EU legislation lays also down the rules applying in case the post-market safeguard procedure would result in the need for the **recall of vehicles**, specifying in particular the collaboration between the manufacturer, the type approval authority and the authorities in the other Member States in relation to the corrective actions to be taken and the procedure to be followed for the exchange of information.

In all the above mentioned procedures a specific role is assigned to the European Commission, in particular to resolve any dispute arising from these procedures.

The 1958 Agreement does not contain any specific **market surveillance** provisions. Experience in the EU has demonstrated the need to establish a common framework on the surveillance of the market for all products subject to technical harmonisation legislation and clear rules on market surveillance have been introduced which apply as from 1 January 2010. The European Commission is currently assessing to what extent these rules should be introduced in the EU legislation on the type-approval of motor vehicles to improve its implementation and enforcement.

The informal group is invited to consider whether, with a view to improve the functioning of the 1958 Agreement, it would be appropriate to:

- introduce more rigorous and defined safeguard requirements, and to use for that purpose the examples provided in the EU legislation on the type-approval of motor vehicles;
- introduce provisions on **market surveillance**, using the EU framework legislation on market surveillance as an example.

- develop and introduce specific provisions relating to the **recall of vehicles**, by specifying the respective obligations and responsibilities of the parties involved (manufacturers, Contracting Party demanding the recall, Contracting Party that issued the type approval for the type of vehicle concerned, other Contracting Parties applying the Regulations concerned²⁰;
- to review the **dispute settlement** procedure in Article 10, and in particular to re-assess the appropriateness of allowing new Contracting Parties to opt out from this dispute settlement procedure.
- to consider whether any useful role could be provided to WP.29 and/or its working groups in the dispute settlement procedure, as outlined in paragraphs A.3 and A.4 of document ECE/TRANS/WP.29/1059.

CONCLUSIONS & FURTHER STEPS:

31. This contribution has been submitted by the representative of the European Commission with the aim of providing a comprehensive but non-exhaustive list of issues which are considered to deserve the attention of the informal group for the elaboration of a roadmap on the future orientation of the UNECE 1958 Agreement, and in particular for establishing an appropriate level of quality assurance for the type approval procedure and for the mutual recognition based on these type-approvals.

The members of the informal group are invited to suggest any additional issue which they consider should be addressed by the informal group in the context of quality assurance of the type approval system under the 1958 Agreement and to bring in their input on the best possible approaches for providing adequate answers to the questions and solutions to the problems identified.

The further exchange of views and work to be carried out by the informal group on these issues should result in the elaboration of a roadmap for the review of the 1958 Agreement, identifying these issues which need to be addressed and for which detailed proposals have to be elaborated to preserve and improve the functioning of the 1958 Agreement.

²⁰ See the note submitted by the Chairman of the informal group for the second meeting of the informal group with the title "Review of the 1958 Agreement" and the comments related to Article 4