

THE STRUCTURE AND THE CONTENT OF THE SCOPES OF REGULATIONS BELONGING TO THE 1958 AGREEMENT

1. Background and precedents

1.1. On the 91st session of GRSG Spain proposed to modify the scope of Reg.66 (Strength of bus superstructure) and introduced a new subparagraph saying: “At the request of the manufacturer, this Regulation may also apply to single-deck rigid or articulated vehicles belonging to Classes other than II. or III.” This formula was new in this regulation, but similar texts were used earlier in other regulations, too, e.g. in R.116.

Hungary and Russian Federation expressed their reservation underlying that this formula is not in line with the 1958 Agreement.

1.2. The Secretariat turned to the Office of Legal Affairs (OLA) of the UN asking their position “about the status of type approvals granted on a voluntary basis or at the request of the manufacturer” (Report of 142nd session of WP.29, paragraph 30) At the request of OLA, WP.29 confirmed that “the intention of the 1958 Agreement, when it was negotiated and adopted, was that Contracting Parties (CP-s) to the Agreement applying a Regulation were bound to recognize all approvals granted”. This statement was sent to GRSG.

1.3. On the basis of the above statement GRSG adopted the Spanish proposal to the scope of R.66 on its 93rd session, but Hungary and Russian Federation held their reservation, saying that the statement of WP.29 is correct but not related to their problem.

1.4. Both Russian Federation (WP.29-144-15) and Hungary (WP.29-144-13) raised the question again on general level on the 144th session of WP.29 where WP.29 adopted the modification of the scope of R.66 and sent the Russian and Hungarian documents to GRSG for consideration (see paragraph 38 and 48 of the Report)

1.5. GRSG discussed the subject considering two further Hungarian informal documents (GRSG-94-11 and GRSG-95-10) on its 94th and 95th session. The key points of this discussions and the conclusions are given below.

2. Basic rules of the 1958 Agreement to be considered

2.1. The Agreement specifies (paragraph 1 in Article 6) who may become Contracting Party (CP): countries, regional integrations set up by countries, etc. Manufacturers, their organizations may not be CP-s.

2.2. The CP-s negotiated and adopted the Agreement. It is open for new CP-s to join and adopt it.

2.3. The individual technical Regulations are parts of the Agreement, they are annexed to it. (paragraph 4 in Article 1) That means: the Regulations are specified and adopted by the CP-s. To initiate new Regulation or modify an existing one is the duty and responsibility of the CP-s.

2.4. Every Regulation – among other administrative requirements – shall specify the following technical items (paragraph 2 in Article 1)

- scope (the vehicles to be concerned)
- technical requirements
- test methods

Studying these items of the Regulation every individual CP can decide to apply it – or not.

2.5. Applying a Regulation means (Article 3) that an approved type of vehicle covered by the scope of the Regulation shall be held to be in conformity with the legislation of all CP-s applying the said Regulation. (This is the basis of the mutual recognition of approvals based on harmonized requirements and test methods)

2.6. Consequences of the Agreement

- CP-s applying a Regulation shall recognize approvals based on the requirements specified in the Regulation for those vehicle Categories/Classes (C/C-s) which are covered by the scope. But they may have national (local) regulation, requirements, test methods in respect to the requirements specified in the Regulation for those vehicle (C/C-s). If CP has national regulation, the manufacture may comply either with the national regulation or with the Regulation.
- CP-s may have any kind of national (local) regulation, requirements, test methods in respect of the subject of the Regulation for those vehicles C/C-s which are not covered by the scope of a Regulation.
- Optional scope of the Regulation is not legal.

3. The scope of Regulations in the light of the 1958 Agreement

3.1. GRSG studied the general structure of the scope of vehicle Regulations. The scope of the existing regulations contains the following statements (sub-paragraphs):

A1 type statement about vehicle C/C-s the Regulation shall be applied to which

A2 type statement about vehicle C/C-s where the requirements of the Regulation shall be applied only to the extent that they are compatible with their intended use.

A3 type statement about vehicle C/C-s where the Regulation may be applied optionally.

NA type statement about vehicle C/C-s where the Regulation shall not be applied. This type of statement is necessary only to avoid possible misunderstanding, or to limit the applicability of C/C-s mentioned in A1 type statement.

3.2. The scope of a Regulation shall be clear, short, containing only the necessary statements mentioned above. Every scope shall contain at least A1 type statement. and may contain A2, and NA type statements, if necessary. The Regulation is applied to vehicle C/C mentioned in A1, A2 and NA type statements but with different legal force.

3.3. The legal situation is clear in the case of the following statements:

- A1: the regulation is applied obligatory to the vehicle C/C-s mentioned in this statement for all CP-s applying the regulation.
- A2: the regulation is applied obligatory, but with limited extent to the vehicle C/C-s mentioned in this statement for all CP-s applying the regulation.
- NA: the regulation is not applied for the vehicle C/C-s mentioned in this statement.

3.4. The problem raised by Hungary and Russian Federation concerns with the optional, A3 type statement. GRSG studied the necessity, usefulness of A3 type statement (optional use) in a regulation. It was concluded that the optional use in certain regulations is understandable because:

- the weight and rate of certain vehicle C/C-s could be rather different in the road traffic of the individual CP-s;
- the operational use of certain vehicle C/C-s varies in different countries;
- the accident situation (statistics) of certain vehicle C/C-s varies in different countries;
- the role of different vehicle C/C-s varies in the international traffic and transportation.

But all of these features can be settled in national legislation of any country.

3.5. The optional, A3 type statement is used recently in the following formula (as an example):

“Scope:

- the regulation applies to Class 1 and Class 2 in Category X. (A1 type statement)
- at the request of the manufacturer this regulation may also apply to Class 3 in Category X and also Category Y. (A3 type statement.)”

It raised the following questions from Hungary and the Russian Federation:

- I. who may specify the content and the extent of the scope of a regulation?
- II. what is the legal position of this formula?

3.6. GRSG studied these questions and concluded as follows:

ad I. Considering the 1958 Agreement, only the CP-s may specify the content and the extent of the scope of a Regulation.

ad II. The legal position of this formula is not clear. There are two possible options:

Option 1.

The regulation applies only to Class 1 and Class 2 in Category X. In this case no one CP may approve other vehicle C/C-s on the basis of this regulation, even at the request of the manufacturer. In general it is not possible to approve a vehicle type on the basis of a Regulation which does not cover the vehicle C/C of the vehicle type. In this case this A3 type statement does not have neither technical nor legal meaning.

Option 2.

The regulation applies to Class 1, 2 and 3 in Category X and also to Category Y. In this case this shall be said clearly in the scope and shall be specified by the CP-s, and not by the manufacturers.

3.7. The aim of the 1958 Agreement is to define uniform technical prescriptions and the conditions for reciprocal recognition of approvals based on these prescriptions that it will suffice for certain wheeled vehicles, equipment and parts to fulfill in order to be used in their countries. Optional statements in a scope are not covered by the Agreement. They may be prescribed in national legislation. Legal situation will be clear only if the scope of the Regulation is stated in A1, A2 and NA form. A3 type (optional) statement comes to A1, as demonstrated in para 3.6.

4. Proposals to WP.29 for consideration

4.1. The possible structure and content of the scope of all vehicle Regulations should be unified and consolidated by WP.29, based on paragraph 3.7. considering the definitions given in para. 3.3.

4.2. If WP.29 accepts these proposals, all the WP-s should be informed and asked:

- to use this unified structure of the scopes in their future work
- to check the existing Regulations belonging to their field of responsibility whether their scope is in line with the suggested formula and if it is necessary to modify them.

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