

Guidelines on Regulatory Procedures and Transitional Provisions

Application of Supplements to extensions of previously granted approvals

OICA and IMMA comments

a) Introduction

WP.29, at its 173rd session in November 2017, adopted the revision of the guidelines for UN regulatory procedures and transitional provisions (WP29/2017/107 + Add.1 + Corr.1). In these new guidelines, a new provision was added without having been discussed in detail by the IWTVA Informal Group, completely contradicting past and current practice.

Basically, the new guidelines foresee that, by default, when a new Supplement enters into force under Revision 3 to the 58 Agreement, it becomes also applicable to extensions which had been granted previously (i.e. before this Supplement entered into force).

In detail, the previously valid practice under **Revision 2** to the 58 Agreement is described in doc WP29/1044/Rev 1, §29-30:

29. A Supplement becomes applicable as from the date of entry into force, after which tests according to the Regulation need to take into account the Supplement in question. In the absence of any other date mentioned, Supplements become applicable for all procedures for **new** approvals started after the date of its entry into force, taking however into account the transitional provisions, if any, of the series of amendments to which the Supplement refers.
30. Unless specifically foreseen otherwise, **extensions of existing approvals may continue to be granted on the basis of the provisions valid at the time of the original approval.**

The new guidelines, under **Revision 3** to the 58 Agreement, however now state:

31. In the case of Supplements that have entered into force:
 - (a) Under Revision 2 of the 1958 Agreement, and unless specifically otherwise foreseen, extensions of existing approvals may continue to be granted on the basis of the provisions that were valid at the time of the original approval;
 - (b) Under Revision 3 of the 1958 Agreement, **a Supplement shall apply to new extensions of existing approvals.** However, the Supplement may foresee that it will not affect existing approvals.

b) Description of the problem

1. As OICA already indicated at WP29 in November 2017, several Supplements were developed by the respective working groups and then adopted by WP.29 at its 171st, 172nd and 173rd sessions (March, June and November 2017) under Revision 2 to the 58 Agreement. Due to the normal administrative process of the 58 Agreement, these Supplements however entered or will enter into force under Revision 3 to the 58 Agreement.

OICA experts are in the process of analysing these Supplements and confirmed that some of them in effect entail new requirements (e.g. introduction of the B2 fixture for i-size seating positions in UN Regulations 14 and 16).

This is a first example of "retroactive application" of new requirements, which is contrary to normal practice.

2. Another very important issue is the possibility that, when a future new Supplement (e.g. Supplement 5) enters into force under Revision.3 to the 58 Agreement, it likely will automatically "trigger" the application of previous, old, Supplements 1 to 4, which had entered into force under Revision 2 to the 58 Agreement.

In other words, a vehicle approved to e.g. Supplement 1, when its approval has to be extended, may have to meet Supplements 2 to 5 as well, even though it was not originally designed for that.

This would most likely not be a major issue for Supplements that indeed meet the criteria and do not change the stringency of a UN Regulation. However, one has to recognise that some existing Supplements entail, directly or indirectly, new, additional requirements!

Here again, OICA experts are in the process of analysing these older Supplements and already identified some that will likely create difficulties when extending existing approvals, originally granted before these Supplements became applicable.

c) Suggestion

OICA considers that §31 of the new guidelines adopted in November 2017 (relating to the application of Supplements to extensions of previously granted approvals), should not be applied to those Supplements that were approved before these guidelines were applicable. This in effect would mean that for extensions to previously granted approvals, Contracting Parties continue to apply the previous guidelines for all Supplements approved up to and including the 173rd WP.29 session (November 2017).

As a possible alternative, WP.29 is requested to seek advice and legal interpretation from the Office of Legal affairs concerning the retroactive application of Supplements, which

had been adopted before or at the 173rd WP.29 session. Until such legal interpretation is given, §31 of the new guidelines should not be applied by Contracting Parties when extending previously granted approvals.
