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OICA VIEWS ON GLOBAL HARMONIZATION
THE FUNCTIONING OF THE 1998 AGREEMENT

Transmitted by the expert from the International Organization of
Motor Vehicle Manufacturers (OICA)

Note: This document contains some general ideas and principles for the functioning of the harmonization activities in the framework of the 1998 Agreement. It is based on the text of informal document No. WP.29-135-16 distributed during the one-hundred-and-thirty-fifth session (TRANS/WP.29/1039, para. 115).

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With the adoption, in November 2004, of the very first global technical regulation under the 1998 Agreement and the development of several others in process, OICA believes that the time has come to further review the functioning of the 1998 Agreement and its relation with the 1958 Agreement, in order to define a general basic common understanding, thereby facilitating the further development of other global technical regulations and their transposition into national or regional or international legislation.

On the basis of current experience, OICA wishes to present some general ideas/principles, in the hope that these will help existing or future Contracting Parties to the 1998 Agreement in their activities to globally harmonize vehicle technical requirements.

These general principles are as follows:

1. There is a clear need for:
 - (i) An ever increasing number of countries to sign, if possible, both the 1998 and 1958 Agreements
 - (ii) A continuing commitment by Contracting Parties to pursue the global regulatory process and to adopt the resulting global technical regulations (gtr), taking into account the principles outlined below.
2. Products complying with a gtr should be universally accepted in all markets, signatory of the 98 Agreement.

Governments have the choice to accept compliance with the gtr in their national market, as an alternative to existing national/regional requirements, or to mandate compliance with the gtr, as the sole national/regional requirement.

At this stage and wherever possible, national or regional requirements may remain an optional alternative to a gtr, such that manufacturers can use either if the national Government accepts this.

During the review process of the 1998 Agreement, this concept might need to be more clearly spelled out in the text of Article 7 of the 1998 Agreement.

3. At this stage, and for the foreseeable future, existing UNECE Regulations under the 1958 Agreement should remain in place and should, at the same time, automatically be candidates for a gtr and be referenced in the Compendium.

Whenever new UNECE Regulations are developed under the 1958 Agreement, they should, as far as possible, be technically compatible to the corresponding gtr, if any, such that products complying with the gtr would always comply with the UNECE Regulation. Such procedure should also allow UNECE Regulations to refer, on a case-by-case basis, to specific items in a gtr, without necessarily taking over the whole content of the gtr.

4. At this stage and as long as the 1998 Agreement does not foresee a global certification and reciprocal acceptance mechanism for gtr's, the 1958 Agreement and its UNECE Regulations

can be used to provide a certification and acceptance mechanism for gtr's in those countries which accept this mechanism.

Under the current framework of the 1958 Agreement and UNECE Regulations, which will remain in place for quite some time, gtr's should be transposed in an existing or future UNECE Regulation, under the 1958 Agreement, thereby allowing the setting up of a mechanism of mutual recognition.

The following possibilities should be considered, on a case-by-case basis:

Case 1 – The gtr covers a subject already addressed by an existing UNECE Regulation

In this case, different solutions are possible:

- (i) The existing UNECE Regulation is amended to incorporate (e.g. as a separate annex or within the relevant existing requirements) the technical content of the gtr, as an alternative to the already existing technical content of the UNECE Regulation, such that both sets of prescriptions become acceptable alternatives.

This would allow UNECE approval to be obtained on the basis of either the existing UNECE requirements or of the new "gtr" requirements. This approval would be valid in all Contracting Parties signatory to the original UNECE Regulation, in accordance with the 1958 Agreement procedures to amend an existing UNECE Regulation.

- (ii) The existing UNECE Regulation is retained unchanged, but in addition, a new UNECE regulation is adopted, copying the technical content of the gtr.

This would result in a situation similar to the UNECE Regulation No. 13 and Regulation No. 13-H. However, approval to the new UNECE Regulation (copying the gtr) would only be valid in those Contracting Parties signatory to the new regulation; it will clearly take some time till a sufficient number of countries sign the new regulation.

Experience, however, indicates that such a solution is not recommended.

- (iii) The existing UNECE Regulation is amended, such that its technical content is replaced by the gtr, either fully or only within selected paragraphs (the latter meaning that some individual UNECE requirements remain); this process will need to be reviewed and possibly repeated whenever the gtr is amended.

This would ensure that the UNECE Regulation and the gtr are at least technically compatible (if the gtr fully replaces the existing UNECE requirements, then both sets would even be totally identical).

Whenever the gtr is amended later on, this process needs to be repeated in order to avoid later discrepancies.

- (iv) The existing UNECE Regulation is amended, such that its technical content simply makes reference to the gtr, either fully, or only within selected paragraphs; this process will need to be reviewed whenever the gtr is amended in order to take into account necessary lead-times and application dates.

This would ensure that the UNECE Regulation and the gtr are at least technically compatible (if reference is made to all the requirements of the gtr, then this would mean that the gtr fully replaces the existing UNECE requirements); only the administrative parts of the existing UNECE Regulation would be retained, in order to obtain type approval.

The advantage of such system of "reference" would be that, whenever the gtr is amended, the corresponding amendment process for the UNECE Regulation is highly simplified (only the administrative parts would need revision), unless the new, amended gtr requirements are not acceptable in the 1958 Agreement framework.

- (v) The gtr would have a clause headed "Alternative Standards" which would name an UNECE Regulation as being accepted as an alternative standard, and compliance to the gtr could be achieved simply by providing the appropriate ECE Approval number. This would only apply when the technical requirements of the gtr and the UNECE Regulation are the same.

Such system would be similar to the practice in some Australian ADR's (Australian National Standards), recognizing UNECE Regulations

Case 2 – The gtr covers a new subject, not addressed by any existing UNECE Regulation

In this case, different solutions are possible:

- (i) A new UNECE Regulation is developed, copying (totally or, if needed, only the selected paragraphs) the technical content of the gtr; any future amendment of the gtr requires corresponding amendment of the UNECE Regulation.

This would ensure that the UNECE Regulation and the gtr are at least technically compatible (if the new UNECE Regulation fully copies the gtr, then both sets would even be totally identical).

Whenever the gtr is amended, such process needs to be repeated in order to avoid later discrepancies.

- (ii) A new UNECE Regulation is developed, simply referring, for the technical content, to the gtr (totally or, if needed, only selected paragraphs).

Whenever the gtr is amended, review of the new UNECE Regulation will be needed, if only to take into account necessary lead-times and application dates.

This would ensure that the new UNECE Regulation and the gtr are at least technically compatible (if the new UNECE Regulation fully refers to the gtr, then both sets would even be totally identical).

Whenever the gtr is amended, the corresponding amendment process for the UNECE Regulation is highly simplified (only the administrative parts would need revision),

unless the new, amended gtr requirements are not acceptable in the 1958 Agreement framework.

In conclusion, OICA understands that each of the above solutions as detailed in Case 1 and Case 2 may need consideration on a case by case basis. However, OICA believes that a system of copying the content of the gtr into an existing or new UNECE Regulation will bring unnecessary complications. OICA recommends a simple system of reference as the preferred solution, whereby the UNECE Regulation would simply refer, for the technical parts, to the content of the gtr (either totally or partly); this would indeed highly simplify the process.

5. Gtr's should represent "best regulatory practice", which is the best reasonable, practicable and cost effective regulatory response capable of solving environmental and safety problems.

Best regulatory practice should result in improved measures of safety or environmental performance and not simply continuously increasing test severity.

6. In principle, gtr's should have only one level of stringency and the test procedures, test devices and instrumentation must, to the maximum extent possible, be identical.

However, considering the special needs or conditions of individual markets, it can contain different levels of stringency/mandatory equipment where necessary. Governments have the choice of the level, depending on the individual markets covered.

In any case, the most severe level within the gtr must automatically be accepted as covering the less severe levels.

7. Gtr's should lead to the elimination of unnecessary, redundant, or conflicting national/regional requirements.
8. Any new regulatory requirements should be based on all available scientific research, particularly the worldwide coordinated research or expertise resulting from IHRA, ISO, ...
9. The selection of candidate gtr's should be based on a selective assessment of the subjects needing harmonization; this selection should also be based on an assessment of the feasibility of global harmonization. It may be unrealistic to expect that all regulatory aspects need to be harmonized.
10. On a case-by-case basis, it should be possible to develop a globally harmonized requirement, such that the test procedure would be globally harmonized without actually regulating the limit values, at least during a transitional period. Should it not be possible for such a requirement to become a gtr, a sufficiently binding legal mechanism must be found such that no national deviations occur to globally harmonized test procedures; the legal implication of the concept of "Special Resolutions" needs to be clarified; in particular, Special Resolutions might need to undergo the process of Article 7.1 of the 98 Agreement, such that they must be submitted to the national implementation process, as is the case for gtr's.
11. During the development process of a gtr, independent parallel national or international regulatory development should be avoided as much as possible, in order to avoid potential contradictions between the gtr and the other ongoing regulatory developments. This does not

mean that internal consultation procedures should be prevented; it however means that the development of a gtr should in effect guide the national regulatory development.

As a minimum, parallel national or regional regulatory development should be notified to the other Contracting Parties, similar to the provisions foreseen in the framework of the 1958 Agreement by the Consolidated Resolution R.E.3 (document WP29/78/Rev. 1, para. 4.1). Such notification should include all necessary details to allow consideration in the development of a global technical regulation.

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