



**Economic and Social
Council**

Distr.
GENERAL

TRANS/WP.29/2002/28
14 February 2002

ENGLISH ONLY

ECONOMIC COMMISSION FOR EUROPE

INLAND TRANSPORT COMMITTEE

World Forum for Harmonization of Vehicle Regulations (WP.29)
(One-hundred-and-twenty-sixth session,
12-15 March 2002, agenda item 7.1.)

ENFORCEMENT OF TYPE APPROVAL AND CONFORMITY OF PRODUCTION STANDARDS
FOR MOTOR VEHICLES

Transmitted by the representative of the United Kingdom

Note: The text reproduced below was prepared by the representative of the United Kingdom with a view to assisting WP.29 in its consideration of the questions concerning uniform application of type approval procedures under the 1958 Agreement (TRANS/WP.29/815, para. 21).

This document is a working document circulated for discussion and comments. The use of this document for other purposes is the entire responsibility of the user. Documents are also available via the INTERNET: <http://www.unece.org/trans/main/welcwp29.htm>

1. INTRODUCTION

Following discussions at previous WP.29/AC.2 meetings concerning deficiencies in the current enforcement regime for UNECE type approval and conformity of production testing, the United Kingdom has been reviewing how improvements might be achieved to:

- provide better technical drafting and agreement of Regulations to allow a single common understanding and testing regime/protocol,
- make approval decisions and certificates easily accessible and more transparent to other Contracting Parties and their technical authorities, and
- allow such agreements to be enforced without the need for formal arbitration by the UNECE.

This paper outlines possible solutions that would retain the role of each Contracting Party (and delegated regional economic integration organization where appropriate) in establishing the approval criteria and basic testing protocols for each Regulation. A newly constituted "advisory" non-statutory committee is proposed (operating under the auspices of WP.29/AC.2) to help deliver better management of the process and to address the issue of non-compliance and product recalls. The committee would report directly to WP.29/AC.2 and comprise senior delegates. WP.29 is also asked to consider opportunities for moving the current type approval documentation to Internet based systems. Finally the paper recognizes the need for solutions applicable to other regulatory fora such as the European Union.

2. BACKGROUND

Previous discussions on the operation of the UNECE type approval regime recognized the concern of Contracting Parties and Approval Authorities that some aspects of the current type approval Regulations were open to varied interpretation. This variation has led to some products entering the marketplace with less than desirable certainty of their compliance with common minimum standards.

The existence of these differences erodes the confidence of Governments and consumers, and risks the integrity of the ECE type approval system and the principles of reciprocal recognition, which it upholds. The consequences of these differences are distortions in competition and in some cases increased risk to road safety and the impact of vehicles on the environment. Despite raising the issue at previous WP.29 meetings, evidence of problems with interpretation and application of UNECE standards and their enforcement by authorities continues.

In seeking to resolve these issues, the United Kingdom has been considering how a new management system might be implemented at World Forum / Administrative Committee level to address the shortcomings of the current system. The main objective being to enhance the existing system described in the 1958 Agreement thereby reassuring all concerned (e.g. Governments, industry, consumers) that the present approval system permits only properly approved and compliant products to enter the market.

3. CONSIDERATIONS

The 1958 Agreement (as amended in 1995) is comprehensive in describing the mechanism of type approval. It establishes obligations upon the manufacturer to provide information relating to the vehicle/components to be tested and sets out what the approval authority must consider and do in granting approval for the product. The obligation on the authority not only concerns the "type approval" but also extends to establishing and verifying the arrangements manufacturers have to ensure that when produced in volume, the product continues to comply with the approved vehicle or component through a system of Conformity of Production (COP) checks.

Type Approval and COP procedures are well described in the Agreement and supporting Regulations. With over forty year's experience of managing the system, it might be assumed that Contracting Parties, their Approval Authorities or Technical Services, and vehicle and system manufacturers are well versed in its operation. However, this is not the case in practice. In recent years the commercial pressures on type Approval Authorities have increased which has brought about a more competitive marketplace for all type approval business. This situation has forced Approval Authorities to adopt liberal practices and interpretations where such methods will help secure business from manufacturers. Naturally manufacturers tend to favour Approval Authorities that operate the most liberal regimes for their products.

The differing standards applied by Approval Authorities are not just a result of the commercial pressures and the need to attract approval business. The separate Regulations are complex documents containing detailed technical requirements, test procedures and performance criteria to which products must comply before approval is granted. Inevitably, with thirty-eight authorities and numerous Regulations, an amount of interpretative difference will always exist. At a low level of effect such differences can be tolerated within the system. But when these differences are of sufficient magnitude to influence manufacturer selection of approval authority then the Contracting Parties need to take action to restore confidence that the type approval system is not being undermined and legislated standards subverted. Without action the whole system of UNECE type approval could be brought into disrepute.

The responsibility for the current situation does not rest solely with the Approval Authorities, however. The drafting of technical requirements in Regulations can often be a long process of negotiation and amendment resulting in standards, which differ, from the original intent, or which contain ambiguities perhaps introduced through last minute amendment or compromise. While these differences might appear minimal, their effect can sometimes lead to ambiguity for the type Approval Authorities that are required to interpret the Regulation and approve products. Resolving these issues perpetuates a system of localised interpretation, which authorities undertake in good faith to help facilitate the type approval system. While all involved welcome the constructive advice of the authorities, it is nonetheless an unhelpful imposition on them and one, which Contracting Parties should seek to remove as far as possible.

A further complication in the approval process is the selection of vehicles, systems and components for testing by the type approval authority (e.g. worst case selection). In every case these decisions are undertaken in close consultation with the vehicle manufacturer but this information is usually not shared with other Approval Authorities. While this is not a significant issue at the time of approval, it can lead to difficulty when a Conformity of Production (COP) problem is discovered. These are generally rare occurrences but easy access to the original approval data, worst case selection criteria and test reports would overcome some of the existing uncertainties which the "compliance checking" authority experiences.

Access to this data would also help greatly to make the whole process more transparent and hence improve confidence in the system.

A system already exists to allow shared access to approval information but this is only made available upon request. This is generally held by authorities to be a cumbersome and time consuming imposition with the result that its practical use is very limited and provides few real benefits to any of the authorities. While this might be true, it does not override the basic requirement for transparency within the UNECE type approval system and negate the responsibility of authorities to operate the system. For Contracting Parties, the challenge is to develop an information system, which Approval Authorities operate for its value to themselves, their Governments and consumers rather than by prescription.

A separate but related issue is how to deal with poorly approved products once they have entered the marketplace. The UNECE system of type approval is concerned with access to the market for products, which meet minimum requirements in Regulations. But where non-compliance occurs, there is no internationally recognised system for recalling defective products and only a few National regimes exist.

Manufacturers generally take a very responsible approach to recalling products where these are shown to have a direct safety or environmental consequence. In practice (across Europe) these recalls are relatively few and are always difficult to implement. This effectively cheats the consumer during purchase and may possibly endanger themselves and others. Consideration should therefore be given to improving existing measures to include recalls resulting from poor or defective approvals, or problems found during COP enforcement.

The maximum penalty for incorrectly approved products currently imposed is the suspension or withdrawal of a type approval certificate. This can be an inefficient, bureaucratic and time consuming process that provides few conclusive results and may have no impact on products already in the marketplace. Consequently it is rarely used and does little to promote consumer confidence in the type approval process. Where action is taken then this is directed at the manufacturer by suspending the type approval; no substantive action is taken against the type approval authority for any incorrect interpretation of Regulations where this has been a factor. Contracting Parties cannot continue to ignore the shortcomings of this system. Consumers throughout territories where UNECE Regulations apply should expect the type approval system to deliver uniformly safe products to the market, and to take adequate measures when incorrectly approved products are found.

4. SOLUTIONS

Much has been spoken in recent years about the problems with the operation of the type approval system but little has changed at working level. The problems that were identified several years ago continue to this day and Contracting Parties need now to address the weaknesses of the current system and develop new robust processes to deal with non-conformity.

It is clear that a much stronger legislative structure would help but it is recognised that amending the current Agreement would take many years to negotiate and implement. Shorter term solutions are therefore needed and it is proposed to focus the improvements upon better management of the current systems and procedures; the emphasis being on the commitment of the Contracting Parties to enforce existing requirements and for this outline to be embedded in the culture and operation of Approval Authorities and Technical Services.

It is difficult to envisage any new system seeking to overcome these issues without an increase in management control and oversight by WP.29/AC.2. But this need not be a bureaucratic nightmare. For example much could be done by better systems at technical level to ensure that draft proposals emerging from the technical Working Parties are of high quality, technically robust and unambiguous. Drafting of Regulations should aim to reduce the need for localised interpretation by Approval Authorities and Technical Services to an absolute minimum. In practice, this means reaffirming with technical Working Parties the need to produce high quality proposals meeting a common set of criteria.

To support the technical Working Parties in meeting this objective, WP.29 should consider developing guidelines for better regulation making. It is also proposed that when presenting new or amending Regulations to WP.29, Working Party Chairmen should inform the group of the measures it has taken to ensure compliance with the guidance. Working Parties may wish to incorporate a small ad-hoc group of Technical Services to check proposals before submitting them to WP.29.

It is also considered essential to provide a mechanism to allow Approval Authorities and Technical Services to share local interpretations with other Contracting Parties. Such a process is essential if we are to encourage transparency in the workings of the type approval process and encourage Authorities to share their decision process and achieve a common interpretation. This issue affects each technical Working Party but rather than implement separate systems, a common approach under WP.29 should be adopted. It is proposed that WP.29 implement a new information exchange system, possibly in the form of a web-based forum/bulletin board.

A system to manage better the dispute process is needed whereby WP.29/AC.2 can resolve cases of dispute involving allegations of sub-standard type approvals or where COP provisions are not being complied with.

At present these disputes should be dealt with informally using the procedures outlined in Article 10 of the 1998 Agreement (as amended in 1995), and formally using Article 11. But as these have only limited legal effect the potential exists to undermine the process. One solution would be to amend the Agreement to provide a more acceptable arbitration process to which all Contracting Parties could accede. However, we recognize the difficulty of this and conclude that as a first stage, WP.29/AC.2 should look to develop local solutions.

It is proposed that a sub-committee should be incorporated which could advise WP.29/AC.2 on disputes and their resolution. It is acknowledged that this increases the administrative burden on the committee but there appears to be no alternative. What is proposed is a small group comprising two independent senior delegates (from WP.29/AC.2), the Contracting Parties in dispute and the Chairman of the technical Working Party affected. Members of the committee would be required to exercise good management and engineering judgement to resolve issues to the satisfaction of all concerned. The decisions of the group should be reported to WP.29/AC.2 and the technical Working Party concerned. It is expected that the group would meet infrequently and align with the existing WP.29/AC.2 meetings schedule although, in order to resolve difficulties in a timescale which matches industry's needs, some disputes may have to be recorded by correspondences such as e-exchange.

Since the existing legal arrangement for re-calls is believed to be different amongst the Contracting Parties it is difficult to make positive recommendations for consistent and uniform action. A first step would be to provide a summary of the legal or operational systems in each Contracting Party as a basis for analysis and further consideration.

The secretariat has made significant progress in providing Internet based documentation and reports, Regulations and working documents to help ease the administration of WP.29 and its sub groups. However, the type approval community also needs to embrace this new technology and Internet accessible solutions which could deliver faster and more comprehensive data sharing between authorities. The strategic aim of the Contracting Parties should be to use fully web-based approval documentation within 5 years. The modification of forms and documentation for the Internet would also facilitate the use of a secure "closed" or "password protected" website which would contain all records of UNECE type approvals. This would include not just the standard documentation but also the justification for worst case and type selections, test reports and the Conformity of Production clearance decisions and plans. The data would be accessible only by type Approval Authorities (by password or similar control) that would maintain the confidentiality of the data which manufacturers will demand. The system might build on the framework currently being established by manufacturers, Authorities and Technical Services.

In taking these issues forward, WP.29/AC.2 needs to keep in mind the broader context of international vehicle regulatory activity (especially at regional level) and consider how any new procedures at UNECE level will impact/interact with those in other fora.

5. SUMMARY

The United Kingdom is proposing that Contracting Parties consider how to improve the management of the existing UNECE motor vehicle type approval system. These proposals are based upon a need to improve both the accountability of the authorities and agencies operating the system, and a need to improve the transparency of the process to the sponsoring Governments and public. The United Kingdom proposes:

- technical Working Parties should be reminded of the need for high quality, technically robust and unambiguous drafting of new or amending Regulations,
 - WP.29 should prepare a guide to good regulation making to which all new proposals should conform,
 - a statement should accompany all regulatory proposals to WP.29 from the technical Working Party confirming its compliance with the guide and setting out the editorial review process.
 - WP.29 should implement systems to help resolve interpretation issues,
 - WP.29/AC.2 should consider a new advisory group to resolve disputes between Contracting Parties,
 - WP.29 should consider reviewing current re-call systems in the Contracting Parties and produce a short summary report within 18 months,
 - Contracting Parties establish a timetable for providing standardized web-based type approval documentation within 5 years or less, and
 - Contracting Parties investigate options for providing a closed Internet website for the free exchange of all type approval documentation for implementation within 5 years or less.
-