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RESOLVING OF INTERPRETATION ISSUES AND REQUIREMENTS FOR
THE TECHNICAL SERVICES

Transmitted by the representative of the European Community (EC)

Note: The text reproduced below was prepared by the representative of the European Community with a view to assisting WP.29 in its consideration of the questions concerning the interpretation of UNECE Regulations and the requirements for the Technical Services conducting the tests of the UNECE Regulations. It is based on the text of document TRANS/WP.29/2003/100 and takes into account the comments received from various delegations in connection with that document.

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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.

Ideally, no interpretation should be necessary in the application of these Regulations and it is proposed that new measures be adopted by WP.29 to ensure that only high quality and unambiguous texts are ratified in the future. New measures are also needed to address the on-going problem of interpretation with existing Regulations.

It is proposed that WP.29 actively encourages all Contracting Parties, their Technical Services and the Subsidiary Working Parties to adopt the following guidance in the operation of the type approval system.

A. Interpretation issues

Technical Services make daily interpretations of Regulation texts. In most cases those decisions are soundly based and technically robust but, occasionally, some can be poorly judged. Some interpretations require decisions on borderline issues while others could involve items beyond the scope of the specific Regulation such as new technologies. 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 Authorities reach the robust decisions that are expected.

An important first step in overcoming these problems is to encourage Approval Authorities to communicate with each other to ensure that Regulations are applied in a consistent and appropriate manner.

A.1 Interpretation prior to approval being granted

When an application for type approval requires the Approval Authority to make a significant interpretation of the Regulation, they shall actively inform and seek guidance from other Authorities before making a decision.

The Authority concerned shall notify the other Authorities contracted to the Regulation of the issue and of their proposed solution, including any supporting information from the manufacturer. As a general rule, this should be via electronic media. A period of 14 days should be allowed for replies.

- The Authority having taken account of any comments received, can then issue approvals in accordance with the new interpretation.
- If it is not possible to take a decision according to the comments received, the Authority shall seek further review by the Article 10 Arbitration process.

A.2 Interpretation anomalies subsequent to approval being granted

In situations where different interpretations exist between Approval Authorities, but subsequent to an approval being issued, then the following procedures shall be followed.

In the first instance, the Authorities concerned shall seek to resolve the issue by mutual agreement. This will require liaison and for each party to review the procedures used to test and approve the vehicle/equipment/part being disputed. The following guidance will be adopted.

- (i) In the event of an error being acknowledged by the Approval Authority, then no further action is needed unless the withdrawal of the approval is necessary.
- (ii) Where agreement is reached which necessitates a new or different interpretation of existing practice (by either Authority), then this shall be communicated to other Contracting Parties for the Regulation in question as a matter of urgency. The other parties shall have [14] days to comment upon the decision following which the Approval Authority, having taken account of any comments received, can issue approvals in accordance with the new interpretation.^{1/}
- (iii) Where agreement cannot be reached, then the Authorities concerned shall seek further review by the Article 10 Arbitration process.

A.3 Arbitration Process in accordance with Article 10 of the 1958 Agreement

To resolve issues of interpretation between Approval Authorities, the arbitration process outlined in Article 10 of the 1958 Agreement ^{2/} is to be used.

The primary responsibility rests with Chairpersons of the Subsidiary Working Parties to identify issues where this process is necessary and to put in place measures at the earliest opportunity to resolve the different interpretations. The Chairperson will develop suitable procedures to deal with such issues as might arise but shall be able to demonstrate to AC.2/WP.29 that:

- (i) full consideration of the different opinions by the Approval Authorities concerned is undertaken, in addition to views of other relevant Authorities,

^{1/} At any time Contracting Parties may still raise the issue for further discussion at subsequent Technical Working Party meetings.

^{2/} 1958 Agreement. E/ECE/324 Rev2. - E/ECE/TRANS/505

- (ii) decisions are based upon appropriate technical advice taking full account of the subject area,
- (iii) wherever possible a unanimous decision is reached, and
- (iv) procedures are transparent and auditable.

If necessary to resolve the issue, the Chairperson shall have the authority to add to the next available meeting of the Subsidiary Working Party a work item relating to the issue without the need to obtain prior approval of AC.2/WP.29. In these circumstances, the Chairperson would be expected to report progress to AC.2/WP.29 at the earliest opportunity.

After arbitration the Chairperson shall provide a report to AC.2/WP.29.

A.4 Procedure to be followed at the end of the Arbitration process.

At the end of the Arbitration process the following actions are taken:

A.4.1 Where no amendment to the Regulation is necessary

The agreed interpretation of the regulation shall be implemented in accordance with the procedures contained in paragraph A2 and A3 above. WP.29/AC.2 shall be informed.

A.4.2 Where an amendment to the Regulation is necessary

The Approval Authority shall notify without delay other Contracting Parties to the Regulation that the issue has not been resolved. This same notification shall seek their agreement to defer any pending/new approvals until such time as WP.29 approves the new interpretation/amendment or has sought their agreement to process an application through the procedure set out in paragraph B.

WP.29/AC.2 shall be informed of progress. Having considered the facts it shall instruct the relevant Subsidiary Working Party to consider the issue as a priority item at its next meeting. It shall instruct the meeting agenda to be amended accordingly.

The interpretation that results from the arbitration shall be transmitted to the Subsidiary Working Party in advance of its meeting. Normal practice for document distribution should be observed but, taking account of the need for quick resolution of issues, the minimum time for document circulation may be reduced. In these circumstances, however, the Type Approval Authority involved in the disagreements shall assist the secretariat. Where normal administrative practice has not been followed, the Subsidiary Working Party shall take this into account in reaching its decision.

The Subsidiary Working Party shall consider any representations received in respect of the decision. It shall make formal proposals to WP.29 to amend the Regulation following the normal procedures. WP.29/AC.2 will consider the issue as a priority item at its next meeting.

B. New technologies development

When a new technology:

- cannot be taken into account by a Regulation (for example: no appropriate test cycle; substitution of mechanical parts specified in the text by other means; use of a technology which did not exist at the time of the Regulation's drafting); and
- is not sufficiently mature to justify amending the Regulation in a general way;

a Contracting Party may apply for a special amendment to the Regulation that is restricted to a single type of vehicle, equipment or part.

In such a case, the following procedure shall be followed:

The Contracting Party shall submit to the appropriate Subsidiary Working Party a file containing the following elements:

- the reasons why the technologies or concept in question make the vehicle, equipment or part incompatible with the requirements;
- a description of the safety and environmental considerations concerned and the measures taken;
- a description of the tests, including their results, demonstrating that, by comparison with the requirements from which exemption is sought, at least an equivalent level of safety and environmental protection is assured;
- a document of no more than 1000 words [in its English version] suitable for annexing to the Regulation, defining the type of vehicle, equipment or part in question and containing a summary of the points above.

The Subsidiary Working Party shall consider the application as a priority item at its first meeting following the application. If the Working Party approves the application then the summary document shall be forwarded to WP.29 and AC.1 for adoption as an amendment under the procedures of Article 12 of the 1958 Agreement. Where appropriate, the adoption decision shall specify whether the amendment is subject to any other restrictions, such as time limits. In all cases, the validity of the approval shall not be less than thirty-six months. The Type Approval Authority shall ensure that the manufacturer complies fully with all restrictions placed upon the amendment.

The amendment shall be identified as a supplement to the series of amendments in force at the time and the Contracting Party and the approval number shall be listed in the "Observations" column of the document entitled "Status of the Agreement, of the Annexed Regulations and of amendments thereto".

If the summary document is adopted as an amendment without time limits, an official amendment to the concerned Regulation has to be studied and proposed by the Technical Working Party.

In all cases the Type Approval Authority shall observe the requirements of Article 12.2 2/ and issue approvals only in accordance with the stated timescales.

C. Worst Case Selection

Type Approval Authority will normally practice "worse casing", i.e. they will establish a variant or version specification from the type specification (which may be a hypothetical variant or version) that, when tested, represents the type to be approved under worst conditions. The decisions taken along with the justification must be recorded in the approval documentation.

D. Technical Services

[This section will be completed at a later stage.]

E. Documents

The Approval Authority must ensure that the following is included in the approval documentation:

- A record of the worst case selection and the justification for that selection. This may include information from the manufacturer;
- A record of any significant technical interpretation made, different test methodology applied, or new technology introduced;
- A test report from the Technical Service;
- 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 Authority, ISO 9000 certification, etc), and the date of the initial and any surveillance assessments.
- The approval certificate.

These documents must be available to other Authorities on demand. The issuing Authority must despatch the requested documents within 14 working days after receiving the request, or explain why it cannot comply with the request in time. By this deadline it shall announce when, within the next 28 days, it will deliver the requested documents.

2/ 1958 Agreement. E/ECE/324 Rev2. - E/ECE/TRANS/505

F. Transmission of information

In order to respond in a realistic timeframe to issues of arbitration and document sharing it is important to work as efficiently as possible and to exploit new communication technologies. WP.29/AC.2, the Subsidiary Working Party (GR) (through its President or its Secretary), and all other parties involved shall therefore take all possible opportunities to communicate by electronic media such as e-mail and a bulletin board.
