

Regulation No. 90 (Replacement brake lining)

Proposal for amendments to ECE/TRANS/WP.29/2009/23/Rev.1

The text reproduced below was prepared by the secretariat to correct ECE/TRANS/WP.29/2009/23/Rev.1 on a number of inconsistencies with the text of the 1958 Agreement.

A. PROPOSAL

New paragraph 1.2., correct to read:

"1.2. Original brake discs and brake drums, fitted at time of manufacturing of the vehicle, **and original replacement discs and drums intended for the servicing of the vehicle** are [not] subject to this Regulation.

~~Original brake discs and brake drums intended for servicing the vehicle are not subject to this Regulation if the manufacturer has affixed in such a way as to be indelible and clearly legible at least an identification code as defined in paragraph 2.3.2."~~

New paragraphs 12.1. to 12.4., correct to read:

"12.1. As from ~~12 months after the~~ official date of entry into force of the 02 series of amendments, no Contracting Party applying this Regulation shall refuse to grant approvals under this Regulation as amended by the 02 series of amendments."*/

~~12.2. This Regulation shall apply to the replacement brake discs and brake drums for vehicles that have received a braking system type approval in accordance with Regulations No. 13 or 13-H 24 months after the official date of entry into force of the 02 series of amendments to this Regulation."*/~~

~~12.3. The sale of replacement brake discs and brake drums for vehicles that received a braking system type approval in accordance with Regulations No. 13 or 13-H prior to 24 months after the official date of entry into force of the 02 series of amendments to this Regulation, which do not have an approval to the 02 series of amendments to this Regulation, shall not be prohibited."*/~~

12.2 After the date of entry into force of the 02 series of amendments, brake lining assembly and drum brake lining approvals to the 01 series of amendments to the Regulation shall remain valid and Contracting Parties applying the Regulation shall continue to accept them. ~~until such time that superseding transitional provisions are prescribed."~~*/

B. JUSTIFICATION

It should be reminded that the 1958 Agreement is a permissive agreement. By definition, a Regulation annexed to the 1958 Agreement (Regulation) is not mandatory: Contracting Parties (CP) are not obliged to apply it and once accepted the only obligation is to recognize "E" approvals. Therefore, the scope and the administrative provisions of Regulations should only deal with the conditions of recognition of E approvals. The scope and the administrative provisions can neither impose mandatory E approvals for the sale of certain parts/vehicles in the CP nor prevent that CP require mandatory (E or national) approvals for the sale of certain parts/vehicles in their territories. These prerogatives remain in the hand of CP. Finally, the scope and the transitional provisions may not set requirements for parts that are outside the scope of the Regulation.

New paragraph 1.2.:

This situation of original parts should be clarified. The current scope mixes scope and marking requirements. The only issue to be tackled within this paragraph is the following: Should it be possible to type approve original parts according to Regulation No. 90 (i.e. to open markets)? The issue whether a specific marking is enough or an approval is mandatory for the sale of these parts is a national matter (see above) and has nothing to do in a Regulation.

New paragraph 12.1.:

This paragraph is not in line with our guidelines (TRANS/WP.29/1044). Why do we have to wait for "12 months"? For manufacturers, the sooner, the better. As proposed by CLEPA in ECE/TRANS/WP.29/GRRF/2009/31, it is proposed to delete "12 months". Furthermore, the reference to */ should be deleted because there is no footnote */.

New paragraph 12.2:

This paragraph is not in accordance with our guidelines and is confusing. Firstly, is "24 months" not in contradiction with 12.1. ("12 Months"). Secondly, what does "shall apply" mean? Does it mean that this Regulation shall be made mandatory? As mentioned above, since the mandatory application of a Regulation is a national matter, introducing such requirement in a Regulation is confusing and has not legal effect. Consequently, this paragraph shall be deleted.

New paragraph 12.3.:

Again, this paragraph is not in line with our guidelines and is confusing because its requirements are a matter of national legislation. It was not possible to approve replacement brake discs and drums according to 01 series of amendments. Therefore, "brake discs and drums not approved according to the 02 series of amendments" are outside the scope of Regulation No. 90 and CP may prohibit the sale of these parts (i.e. parts not type-approved) as they want. Consequently, this paragraph has no legal effect, may lead to confusion and should be deleted.

New paragraph 12.4.:

This paragraph is not in line with our guidelines. The end of the sentence is unnecessary. It is therefore proposed to delete "until such time that superseding transitional provisions are prescribed" as proposed by CLEPA in ECE/TRANS/WP.29/GRRF/2009/31.
