

**JUSTIFICATION FOR THE PROPOSAL OF GENERAL GUIDELINES FOR
UNECE REGULATORY PROCEDURES AND
TRANSITIONAL PROVISIONS IN UNECE REGULATIONS
(Informal document No.WP.29-135-8)**

Transmitted by the representative of Japan

1. Introduction

When we apply an ECE Regulation, sometimes it is difficult to figure out approvals which Contracting Parties are obliged to accept, especially in the case that a Regulation is amended by so-called Supplements and technical requirements in the Regulation are changed without altering approval markings.

To raise this concern, we submitted a document TRANS/WP.29/2003/97 to WP.29 in November 2003, which contains the following proposal:

“When the safety level including the modification of limit values (in particular the strengthening of requirements) is reviewed, the procedure of the Series of Amendment should always be adopted, which will require the necessary transitional provisions specifying the date when Contracting Parties may refuse the preceding approval”

This proposal was generally supported by WP.29, and following the discussion, OICA volunteered to make comprehensive guidelines on UNECE regulatory procedures. They submitted their proposal TRANS/WP.29/2004/45 to WP.29 in June 2004 to which CLEPA expressed their concerns in their Informal Document No. WP.29-133-11, and then OICA submitted their revised proposal TRANS/WP.29/2004/75 to WP.29 in November 2004.

However these proposals from OICA did not solve our original concerns. Under these circumstances, we decided to make this proposal for “General Guidelines for UNECE Regulatory Procedures and Transitional Provisions in UNECE Regulations”.

To make this proposal we carefully studied the right and the obligation of the Contracting Parties under the current text of the 1958 Agreement and ECE Regulations annexed to it, especially those of new Contracting Parties who apply Regulation individually like Japan, and drafted it based on our current understanding and interpretation of the 1958 Agreement.

We submit this proposal to WP.29 in order to establish common understandings on this issue, in hope that it will contribute to streamline the future work in WP.29 and its subsidiary bodies, and it will facilitate new Contracting Parties to apply ECE Regulation.

2. Justification Paragraph by Paragraph

Chapter II. “GENERAL GUIDELINES FOR PROPOSING NEW REGULATION”

At this moment there is no guideline for proposing a new Regulation. Nevertheless for the enforcement of new regulations lead-time is sometimes necessary mainly for manufactures. This issue was originally raised by OICA in their document TRANS/WP.29/2004/75. We carefully considered what can be included in this proposed guideline and in transitional provisions of ECE Regulations

Paragraph 1.

This paragraph is introduced to address the concerns raised by OICA in their document TRANS/WP.29/2004/75.

OICA suggested inserting the following transitional provision in a new Regulation:

“date until which Contracting Parties are recommended not to apply this Regulation on a mandatory basis”.

However we think that this kind of recommendation cannot be included in a Regulation itself. So, we made this paragraph 1 in this proposed guideline instead of having the text suggested by OICA in new Regulations.

Paragraph 2.1.

In the usual procedure to establish new regulations, “date of entry into force” is not defined in the proposed text of new regulations. It will be noticed by UN Secretary-General in accordance with Article 1 paragraph 2. and 3. of the 1958 Agreement and it is usually about 6 months after the adoption by AC.1. However it is also possible to stipulate the date of entry into force in the proposed text of new Regulations at the time of the adoption in AC.1 in accordance with the same Article of the 1958 Agreement. We think this procedure may be useful to solve the concern expressed by OICA.

Chapter III. “GENERAL GUIDELINES FOR AMENDMENT PROCEDURES”

Three procedures for amendments of Regulations are currently used. Those are Series of amendments, Supplements and Corrigendum. However no definitions or guidelines of these procedures are provided. We made them in this Chapter.

Paragraph 1.1.2.

It seems that there are some manufactures who have a different understanding of this issue. Nevertheless, we believe this proposed paragraph is completely in line with the 1958 Agreement. The reason of this is because when a Regulation is amended, Contracting Parties have to amend their national legislation to align it to the amended Regulation in accordance with Article 3 of the 1958 Agreement. It means that Contracting Parties can not continue to be obliged to hold their national legislation to be in conformity with the unamended Regulation and can not be obliged to accept the approvals to the unamended Regulation unless otherwise expressly written in the transitional provisions.

Paragraph 1.1.3.

When a regulation is amended and its technical requirements are changed, manufactures have to redesign their products to make them conform with the amended Regulation and have to get new approvals or extensions of the existing approvals, type approval authorities have to prepare for new tests for new requirements, and Contracting Parties have to amend

their national legislation in order to accept the new approvals. It is necessary for all of them to have transitional period in order to switch the framework of reciprocal recognition system from that of the unamended Regulation to the amended Regulation. Length of this transitional period can vary case by case, nevertheless we think that at least the dates defined in paragraph 1.1.3.1. to 1.1.3.3. shall be stipulated in transitional provisions of the amendment in order to avoid misunderstandings.

Paragraph 1.1.4.

Contracting Parties whose application of a Regulation comes into force after the date of entry into force of a series of amendments to the Regulation cannot choose to apply the previous series of amendments, because the texts of the technical requirements of the previous series of amendments would have already disappeared from the Regulation at the time of their application.

It means that they cannot grant approvals to the previous series of amendments and that they cannot be obliged to accept approvals to the previous series of amendments. In fact these new Contracting Parties have not received the type approval communications of the previous series of amendments, which are sent only to the Contracting Parties applying the Regulation.

So, even during the transitional period defined in the transitional provisions these new Contracting Parties cannot be obliged to accept approvals to the unamended Regulation.

Even if this provision were not included in transitional provisions, the 1958 Agreement could be interpreted in a similar fashion. Nevertheless we think this proposed paragraph is necessary to avoid misunderstandings and facilitates new Contracting Parties to apply ECE Regulations.

Paragraph 1.2.4.

This paragraph stipulates different content, in terms of the obligation of Contracting Parties to accept the existing approvals, from that of paragraph 1.1.2. which is a paragraph for Series of amendments. The reason is because the Series of amendments require altering approval markings whereas Supplements do not.

Under the framework of reciprocal recognition of the 1958 Agreement, Contracting Parties have to figure out the approvals that they are obliged to accept by means of approval markings, and if the new approvals have the same approval marking as the existing approvals, Contracting Parties practically cannot distinguish between the existing and the new approvals. Contracting Parties have allowed this situation based on their understanding that when a Regulation is amended by Supplements without altering the approval markings, the existing approvals shall continue to be recognized.

The paragraph 1.2.4 intends to clarify the above stated practice.

Paragraph 2.1.1. (Special Case 1-1)

This Special Case 1-1 is designed to address the concerns expressed by CLEPA in their informal document No. WP.29-133-11.

Paragraph 2.1.2. (Special Case 1-2)

This Special Case 1-2 is made based on the proposal done by OICA in their document TRANS/WP.29/2004/75. We don't deny the possibility of this Special Case, however we are not sure if this procedure is really necessary because the procedure of Supplements can be used instead of a Series of amendments if it is not necessary for Contracting Parties to differentiate the new approvals and the existing approvals.

When this Special Case is used, we think all Contracting Parties need to carefully study the draft proposal of the amendments.

Paragraph 2.2. (Special Case 2)

As a principle, the procedure of the Series of amendments shall be used when the technical requirements are changed. Nevertheless, when the amendments changes technical requirements of only one or two of the various categories of vehicles in the scope of the Regulation, the procedure of the Series of amendments which alters approval markings could impose an unnecessarily large burden to manufactures caused by administrative procedures of type approvals. This is the reason why we made this a Special Case.

Annex 1 “GENERAL GUIDELINES OF TRANSITIONAL PROVISIONS FOR SERIES OF AMENDMENTS”

Annex 1 is based on the existing “General Guidelines for Transitional Provisions in UN/ECE Regulations” which has been adopted by WP29 as its document TRANS/SC.1/WP.29/383. Following modifications are made and the name of the guidelines was changed in order to make it clear that these guidelines were designed mainly for the Series of amendments.

Paragraph 1.1., 1.3., new V.5, new V.6, new V.7 and F3

The word “**regional**” is inserted because Whole Vehicle Type Approval under EU directive shall be also taken into account in these contexts.

Existing paragraph V.5 and C.5, and new paragraph V.10-S and C.11-S

The existing paragraph V.5 and C.5 are deleted and instead new paragraphs V.10-S and C.11-S are introduced with footnotes, because these paragraphs can be used only in the Special Cases stipulated in Chapter III, paragraph 2 of the proposal.

New paragraph V.8 and C.9

These new provisions are introduced because these are actually used in the transitional provisions of ECE Regulation No.11, No.13, No.17, No.18, No.25, and No.26. They have different meaning from the new V.7 and C.7, which exist in the current guidelines. The difference is shown in Figure 1 in the proposal. Provisions like the new V.7 and C7 have more flexibilities than these proposed new provisions V.8 and C.9, because in those cases existing approvals can remain valid and it is useful for Contracting Parties who want to voluntarily continue to accept them.

New paragraph V.9 and C.10

Please see the justification for paragraph 1.1.4. of Chapter III. of the proposal.
