Transmitted by the representative of Hungary

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ARGUMENTS, EXPLANATION OF THE HUNGARIAN RESERVATION TO ECE/TRANS/WP.29/2008/42

GRSG prepared a proposal to modify the scope of Reg.66 (Strength of superstructure). During the discussion Hungary had qualms about the proposed solution and expressed reservation (Russian Federation also did) The explanation of this reservation is given below.

1. Background

1.1. When preparing and adapting the 01 series of amendments to R.66, the footnote from the scope was accidentally left out. Recognizing this editorial mistake, Hungary made an official written proposal to put the footnote. Parallel to that, Spain made a proposal trying to approach this scope to the requirement given in R.107.01 (Annex 3. para. 7.3.1.)

1.2. The original scope (OS) of R.66.01 is:
„This Regulation applies to single-deck rigid or articulated vehicles designed and constructed for the carriage of more than 22 passengers, whether seated or standing in addition to the driver and crew."
And the footnote:
"Nothing in this Regulation shall prevent the Contracting Parties from restricting its scope to particular categories of vehicles."

1.3. The Spanish proposal modified the scope (MS) as follows:
„ 1. SCOPE
1.1. This Regulation applies to single-deck rigid or articulated vehicles beloning to Class II or III
1.2. At the request of the manufacturer, this Regulation may also apply to single-deck rigid or articulated vehicles belonging to Classes other then II or III" Contracting Parties are not obliged to accept the approvals granted in accordance with this paragraph"

1.4. The last sentence of para. 1.2. was disputed by OICA. GRSG turned to the Office of Legal Affairs (OLA) in New York, which passed the question to WP.29. In the report of the 142nd session of WP.29 (ECE/TRANS/WP.29/1062). para.3.1. says:
„Regarding Regulation No.66 (Strength of superstructure) WP.29 was informed that legal advice had been requested from the Office of Legal Affairs (OLA) about the status of type approvals granted on a voluntary basis or at the request of the manufacturer. At the request of OLA, WP.29 confirmed that the intention of the 1958 Agreement, when it was negotiated and adopted, was that Contracting Parties to the Agreement applying a Regulation were bound to recognise all approval granted. WP.29 requested the secretariat to inform OLA on this subject and to ensure that Regulations under the Agreement were drafted to take this into account."
On the basis of this paragraph GRSG deleted the discussed last sentence from the modified scope.

2. The problem on general level.

2.1.The problem is not specific to R.66, it may be generalized. Comparing the two solution in question in Table 1.:

Table 1.

	Original scope (OS)	Modified scope(MS)
Main specification	More general scope, it covered all the technically possible vehicle categories when specified (similar scope as in R.36)	Reduced content, more vehicle categories are not covered by the scope
Exceptions, digressions	The CP-s are allowed to restrict the obligatory use of the Regulation to certain categories in their countries This is restrictive exception	The manufacturers are allowed to apply the Regulation to categories which are not covered by the scope and CP-s have to accept this extension This is extensive exception

2.2. The 1958 Geneva Agreement describes the following:

- Who may become Contracting Party (CP)? Countries, regional integrations set up by countries, etc., (Article 6), but manufacturers, their organizations may not be CP-s
- Every Regulation shall cover the following:
  - wheeled vehicles, equipment or parts concerned (Scope)
  - technical requirements
  - test methods … etc. (Article 1, para.2.)

  Studying these items the CP-s can decide to apply the regulation or not.
- An approved type of vehicle, equipment or part covered by the Regulation shall be held to be in conformity with the legislation of all the CP-s applying the said Regulation. (Article 3)
- Every CP may have national legislation, requirements, test methods for those vehicle types (categories), equipments or parts which are not covered by the scope of a Regulation.

2.3. The general approach used in OS is:

- The scope is as "wide" as technically can be (where the same requirements and approval tests can be used)
- The CP-s applying the Regulation are allowed to restrict the obligatory use of the Regulation to certain categories in their countries. The Regulation may state the categories in which the obligatory use may be "suspended".
- In the "suspended" categories, the CP-s must not use special national legislation, requirements, test methods, etc. The CP-s have to accept – from the viewpoint of national legislation – those vehicle types which are approved according to the Regulation.

2.4. The problems with the MS approach are:

- The narrow scope means that the other categories – being out of the scope – are not covered by the Regulation, so the CP-s may have national requirements, test methods, legislation for these categories.

- The possibility of national requirements may cause difficulties in comers, special national or company requirements may influence the clear competition, tenders, etc.
- It has to be known that it is very easy to produce well prepared national or special requirements, e.g. on the basis of ECE Regulation (In the case of R.66: to change the energy input – depth of the ditch – or to change the specification of the survival space, to specify a new test method, etc.)
- If the manufacturer asks for an approval for a vehicle category which is not covered by the scope, who will decide whether the requirements and test methods are appropriate for that category? (Every Technical Service could have different interpretation.) Are the CP-s obliged to accept different interpretations?
- Of course, the manufacturers may carry out any kind of tests on their vehicles, they can make the results public, they can use them in their advertisements, etc. The only thing what they can not (must not) state: that the vehicle is approved on the basis of a Regulation, the scope of which does not cover the vehicle category the tested vehicle belongs to.
- Summarising the essence in Table 2.:

Table 2

	Original scope (OS)	Modified scope (MS)
National requirements, legislation	Not allowed in all categories specified in the scope	Allowed for the categories which are not covered by the scope
Effect on commerce, free competition	No effect, every CP-s have to accept approved vehicle categories, whether the obligatory use is suspended in their countries or not	The possibility of local requirements, test methods may effect the clear competition.

3. Conclusion.

3.1. An MS-like scope in a Regulation is not in line with the 1958 Geneva Agreement.

3.2. The scope of a Regulation should be as wide, as general as possible covering all the vehicle categories, equipments or parts which may be covered by the specified requirements and test methods.

3.3. If it is necessary to give exception in the scope of a Regulation for the CP-s, it should be restrictive and not extensive.

3.4. If the scope of a Regulation does not cover certain vehicle categories, the CP-s may have local, national requirements, test methods or legislation for these categories. As WP.29 pointed out, the CP-s applying a Regulation are bound to recognize all approval granted on the basis of that Regulation – for those vehicle categories which are covered by the scope of the Regulation. This is the situation in the case of a scope having restrictive exceptions.

4. What to do?

4.1. Hungary's reservation concerns Regulation No 66, but we ask WP.29. to study our questions, problems, arguments on a general level.

4.2. If WP.29 has the opinion that these arguments can base further considerations, the problem could be treated on two levels:

- **On general level:** WP.29 may specify general standpoints to the GR-s about the scope of Regulations.
- **On the level of R.66**: WP.29 could send this problem to GRSG for consideration. There is a good opportunity to do that: the informal expert group IG/R.66 is just working on the possible extension of the scope of R.66. The scope of R.66 should be in line with the scope of R.107 and if it is necessary to make restrictive exceptions.

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