

Implementation of UN Regulation No. 155 (Cybersecurity) – paragraph 5.3.5. – Proposal for a Resolution

I. Background

According to paragraph 5.3.2. of UN Regulation No. 155, each Contracting Party applying this Regulation shall notify and inform by its Approval Authority other Approval Authorities of the Contracting Parties applying this UN Regulation about the method and criteria taken as a basis by the notifying Authority to assess the appropriateness of the measures taken in accordance with this Regulation and in particular with paragraphs 5.1., 7.2. and 7.3. This information shall be shared (a) only before granting an approval according to this Regulation for the first time and (b) each time the method or criteria for assessment is updated. This information is intended to be shared for the purposes of collection and analysis of the best practices and in view of ensuring the convergent application of this Regulation by all Approval Authorities applying this Regulation.

According to paragraph 5.3.4. of UN Regulation No. 155, Approval Authorities receiving the information referred to in paragraph 5.3.2 may submit comments to the notifying Approval Authority by uploading them to DETA within 14 days after the day of notification.

According to paragraph 5.3.5. of UN Regulation No. 155, if it is not possible for the granting Approval Authority to take into account the comments received in accordance with paragraph 5.3.4., the Approval Authorities having sent comments and the granting Approval Authority shall seek further clarification in accordance with Schedule 6 to the 1958 Agreement. The relevant subsidiary Working Party (GRVA) of the World Forum for Harmonization of Vehicle Regulations (WP.29) for this Regulation shall agree on a common interpretation of methods and criteria of assessment. That common interpretation shall be implemented and all Approval Authorities shall issue type approvals under this Regulation accordingly.

The provision in paragraph 5.3.5. of UN Regulation No. 155 needs clarification on what the granting Approval Authority should do, if that Authority cannot take into account the comments received as per paragraph 5.3.4. of UN Regulation No. 155. Should the granting Approval Authority continue processing with granting the type approval or postpone granting?

To clarify such a situation, the Russian Federation had submitted for the consideration by GRVA at its 9th session in February 2021 the proposal for amendment of paragraph 5.3.5. of UN Regulation No. 155 (ECE/TRANS/WP.29/GRVA/2021/5) stipulating that until the aforesaid common interpretation is reached, Approval Authorities shall refrain from granting type approvals related to the received comments.

Several Contracting Parties and OICA argued against the proposal by the Russian Federation mainly stating that (i) the proposal, if adopted, would cause unpredictable delays in granting type approvals, which is not desirable and (ii) the proposal is not relevant for UN Regulation No. 155 and should be addressed to Schedule 6 of the 1958 Agreement.

The Russian Federation recognizes the industry concerns related to robust planning with granting type approvals. Although, the uniform implementation of the UN Regulation No. 155 is rather important, specifically that the Russian proposal helps to come to such a uniform implementation from the very beginning.

Meanwhile, Schedule 6 to the 1958 Agreement neither forbids nor allows granting the type approval in the case of the interpretation dispute between Contracting Parties. Hence, the question of granting the type approval concerned is presently out of the consideration by Schedule 6, so, resolving this question is at the discretion of any Contracting Party.

The Russian Federation considers that the proposal for clarification of the specific provision in UN Regulation No. 155 is not relevant to amending Schedule 6 because that is the specific proposal addressed to UN Regulation No. 155 and presently that proposal is not extended to the implementation of Schedule 6 in general. Although it seems logical that, in a general case, a Contracting Party should postpone issuing the type approvals concerned until reaching the common interpretation of the regulatory provisions, even Schedule 6 does not mention that.

Since Schedule 6 does not regulate the process of type approval issuance, it is appropriate to clarify that process in the UN Regulation concerned, specifically in UN Regulation No. 155.

However, to save time and avoid counterproductive disputes at GRVA, the expert from the Russian Federation had withdrawn the proposal (ECE/TRANS/WP.29/GRVA/2021/5) from the GRVA agenda bearing in mind seeking further consultations on moving forward the proposal.

After the consultations with AC.2, the Russian Federation brings the issue for consideration at the Workshop on the implementation of UN Regulation No. 155.

II. Consideration

The following questions arise regarding the implementation of paragraph 5.3.5. of UN Regulation No. 155:

(1) Should the Approval Authority continue processing with granting the type approval pursuant to UN Regulation No. 155, if that Approval Authority had received from other Approval Authorities comments disagreeing with the methods and criteria of assessment implemented by the granting Approval Authority?

Probable answer: No, because this may lead to breaking the principle of mutual recognition of the compliance assessment results stipulated by the 1958 Agreement.

(2) May the Contracting Parties to the 1958 Agreement, which Approval Authorities have commented negatively on the methods and criteria of assessment implemented by the granting Approval Authority, not accept the type-approval granted by such Approval Authority?

Probable answer: According to Article 3 of the 1958 Agreement Contracting Parties to the 1958 Agreement shall accept type approvals issued by the other Contracting Parties applying UN Regulation No. 155. However, according to Article 4 of the 1958 Agreement, Contracting Parties may prohibit the sale and use of the related vehicles, in their territory until such a non-conformity is rectified.

Based on the above, the Russian Federation proposes to agree on the following resolution:

Keep the provisions of UN Regulation No. 155 – paragraph 5.3.5. as they are, but recommend to the Contracting Parties to resolve in a working manner their controversies related to the provisions of UN Regulation No. 155 – paragraph 5.3. and refrain from granting type approvals until the settlement of disputes.

Reference documents

ECE/TRANS/WP.29/2020/97

ECE/TRANS/WP.29/GRVA/2021/5
