

TECHNICAL REQUIREMENTS AND CONFORMITY ASSESSMENT BASIC TRADE RULES. A CASE FOR MOTOR VEHICLES.¹

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1. INTRODUCTION

Various senior officials from governmental bodies expressed their interest to the TRIM project for a clarification on two basic questions (a, b) concerning the international Agreement of the United Nations Economic Commission for Europe (UN/ECE, 1958) and European Union on rules and type of approval of motor vehicles:

- a) is it possible to classify UN/ECE regulations on motor vehicles as “technical regulations” since they are entitled differently - as “Uniform provisions”, e.g. “Uniform provisions concerning the approval of retro-reflecting devices for power-driven vehicles and their trailers”
- b) what is the legal status of organizations dealing with conformity assessment procedures in the industry of motor vehicles under the EU law.

Before addressing the two questions there is a succinct overview of the international (UN/ECE and WTO/TBT) and EU systems of technical regulations and their role in the motor vehicles area.

2. UN/ECE and WTO/TBT

UN/ECE and EU

With increasing globalisation in the automotive industry, the international harmonisation of **technical requirements for cars** and other vehicles is a high priority. Common technical requirements reduce development costs and avoid duplication of administrative procedures.

The European Union and its Member States have always been at the forefront of international harmonisation efforts, by actively supporting the work within the **1958 Agreement of the United Nations Economic Commission for Europe (UN/ECE)** on international technical harmonisation in the motor vehicle sector.

¹ All opinions and interpretations presented are responsibility of the author.

Key words: technical requirements, WTO TBT agreement, EU, UN/ECE, trade, motor vehicles



Having become a Contracting Party to the Revised 1958 Agreement in March 1998, the Community consolidated the **close links that already existed between the directives of the European Community and UN/ECE Regulations** in the field of motor vehicles. Through its active participation in the harmonisation process, the Community ensures the necessary coherence between the regulatory activities in the UN/ECE and those being conducted at Community level, i.e. between global regulations and the EC Whole Vehicle Type Approval (WVTA) system and its directives.

WTO/TBT

Members to the TBT Agreement must announce their proposed **technical regulations** and **conformity assessment procedures**. Members must also ensure that the technical regulations and conformity assessment procedures of local governments on the level directly below that of central government are announced, except where their technical content is substantially the same as that of texts previously announced by the central government bodies (Articles 3.2 and 7.2 of the Agreement). The **technical regulation** and **conformity assessment procedure** concepts are defined in Annex 1 to the Agreement.

A "**technical regulation**" is a "Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. ". It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process, or production method. Technical regulations must be mandatory. This is the element differentiating them from standards, the application of which is voluntary.

"First, the document must apply to an identifiable product or group of products ... Second, the document must lay down one or more characteristics of the product ... Third, compliance with the product characteristics must be mandatory. "

The concept of "**conformity assessment procedure**" covers "Any procedure used, directly or indirectly, to determine those relevant requirements in technical regulations or standards are fulfilled." The explanatory note specifies that "Conformity assessment procedures include, inter alia, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations."

3. EUROPEAN UNION

Regulatory Framework

Harmonisation of **technical requirements on motor vehicles** has so far been achieved for three categories of vehicles, namely passenger cars, motorcycles, and tractors. The EC Whole Vehicle Type-Approval (WVTA) system applies to passenger cars and to motorcycles on a mandatory basis since January 1998 and June 2003, respectively. As a result, these categories of vehicles must comply with all the relevant EC type-approval directives in order to be placed on the market.

Directive 2007/46/EC, the new framework Directive for motor vehicles, was adopted in 2007. It entered into force on 29 October 2007. Member States have to implement its provisions by 29



April 2009. From then on, it will make EC WVTA mandatory for all the remaining categories of motor vehicles in stages from 2009 to 2014.

The principle of type-approval implies that each **authority granting an approval** for a vehicle, a system, a component or a technical unit is solely responsible for ensuring the conformity of production (COP) during the whole period of validity of the approval.

Directive 70/156/EEC, currently applicable framework directive on the type-approval of motor vehicles, provides for the Member States to take appropriate measures at two stages:

Before granting approval the authority must verify that adequate arrangements for ensuring conformity of production have been taken by the applicant. This is deemed to be achieved if the manufacturer demonstrates compliance with EN standard 29002 or equivalent standards.

After having given approval, the authority must verify that the production arrangements of the manufacturer continue to be adequate. This verification must be carried out in accordance with certain procedures set out in the directive, and, where appropriate, with the specific provisions of the separate directives. This procedure may be carried out with manufacturers' technical equipment and control programs, but may also be extended to the actual testing of selected production samples.

The approval authority of each Member State must also send to the approval authority of the other Member States a copy of the vehicle type-approval certificate for each vehicle type which it has approved, refused to approve or withdrawn. The same procedure applies to type-approvals of systems, components and separate technical units.

For vehicles for which EC WVTA applies, each Member State shall register or permit the sale and entry into service of new vehicles on grounds relating to their construction and functioning only if they are accompanied by a valid certificate of conformity (COC).

A certificate of conformity is, in effect, a statement by the manufacturer that the vehicle conforms to the relevant EC type-approval. Member States cannot refuse to register vehicles for use on their roads if they comply with a properly issued type-approval.

In addition to the separate EC type-approval directives, regulations are developed under the auspices of the UN/ECE Revised 1958 Agreement. **There is a very strong correlation between EU legislation and UN/ECE regulations**, and regulations adhered to by the Community are considered to be equivalent to their corresponding, separate directives for the purpose of EC type-approval.

4. ANSWERS

a) Is it possible to classify UN/ECE regulations on motor vehicles as “technical regulations” since they are entitled differently - as “Uniform provisions”, e.g. “Uniform provisions concerning the approval of retro-reflecting devices for power-driven vehicles and their trailers”?

The answer is – YES! The UN/ECE regulations are a classic example of “technical regulations”. It is their **content** (technical requirements for motor vehicles) that makes them technical



regulations – **not the name**. Similarly, in EU there are **directives** (not “technical directives”) which are technical regulations because of their content, and in Montenegrin legislation there are already regulations (“pravilnik”) which are technical regulations because of their content (e.g. technical requirements for lifts). To “recognize” a technical regulation” one has to read the content of a regulation, because the title will never (or very rarely) include a word “technical” in its scope.

In annex 1 there is an example of WTO/TBT Notifications list which includes regulations on vehicles as a classic example of the field which is covered with WTO/TBT agreement.

b) What is the legal status of organizations dealing with conformity assessment procedures in motor vehicles under the EU law?

In describing EU regulatory framework under 3. we also used the sentence:

“Before granting approval **the authority** must verify that adequate arrangements for ensuring conformity of production have been taken by the applicant. This is deemed to be achieved if the manufacturer demonstrates compliance with EN standard 29002 or equivalent standards.”

This means that the motor vehicles field is primarily “in the hands” of state authorities. It is the state that has not only the obligation to regulate the field but also take over the conformity assessment procedures. There is only one authority (“old approach”) and not a “decentralized scheme” of various “designated/notified” bodies (“new approach”)

"approval authority" means **the authority** of a Member State **with competence for all aspects of the approval of a type of vehicle**, system, component or separate technical unit or of the individual approval of a vehicle; for the authorization process, for issuing and, if appropriate, withdrawing approval certificates; for acting as the contact point for the approval authorities of other Member States; **for designating the technical services** and for ensuring that the manufacturer meets his obligations regarding the conformity of production;

In annex 2 there is a list of “National authorities” in the MV area in EU Member states and, as a rule, the authorities are part of public administration.

There is a possibility that the authority designates a technical service:

"technical service" means an organization or body designated by the approval authority of a Member State as a testing laboratory to carry out tests, or as a conformity assessment body to carry out the initial assessment and other tests or inspections, **on behalf of the approval authority**, it being possible for the approval authority itself to carry out those functions.

It is especially important to know that “technical services” are executing their technical assessment **on behalf of the approval authority** and not in their name.

There are strict **requirements** which must be fulfilled by a prospective technical service:



DESIGNATION AND NOTIFICATION OF TECHNICAL SERVICES

(Directive 2007/46/EC, the [new framework Directive](#) for motor vehicles)

Article 41

Designation of technical services

1. When a Member State designates a technical service, the latter shall comply with the provisions of this Directive.

2. The technical services shall carry out themselves or supervise the tests required for approval or inspections specified in this Directive or in a regulatory act listed in Annex IV, except where alternative procedures are specifically permitted. They may not conduct tests or inspections for which they have not been duly designated.

3. The technical services shall fall into one or more of the four following categories of activities, depending on their field of competence:

(a) category A, technical services which carry out in their own facilities the tests referred to in this Directive and in the regulatory acts listed in Annex IV

(b) category B, technical services which supervise the tests referred to in this Directive and in the regulatory acts listed in Annex IV, performed in the manufacturer's facilities or in the facilities of a third party

(c) category C, technical services which assess and monitor on a regular basis the manufacturer's procedure for controlling conformity of production

(d) category D, technical services which supervise or perform tests or inspections in the framework of the surveillance of conformity of production.

4. Technical services shall demonstrate appropriate skills, specific technical knowledge and proven experience in the specific fields covered by this Directive and the regulatory acts listed in Annex IV.

In addition, technical services shall comply with the standards listed in Appendix 1 to Annex V which are relevant for the activities they carry out. However, this requirement does not apply for the purposes of the last stage of a multi-stage type-approval procedure as referred to in Article 25(1).

5. An approval authority may act as a technical service for one or more of the activities referred to in paragraph 3.

6. A manufacturer or a subcontracting party acting on his behalf may be designated as a technical service for category A activities regarding the regulatory acts listed in Annex XV.

The Commission shall amend the list of these regulatory acts where necessary in accordance with the regulatory procedure with scrutiny referred to in Article 40(2).

7. The entities referred to in paragraphs 5 and 6 shall comply with the provisions of this Article.

8. Technical services, other than those designated in accordance with paragraph 6, of a third country may be notified for the purposes of Article 43 only in the framework of a bilateral agreement between the Community and the third country in question.



Article 42

Assessment of the skills of the technical services

1. The skills referred to in Article 41 shall be demonstrated by an assessment report established by a competent authority. This may include a certificate of accreditation issued by an accreditation body.

2. The assessment on which the report referred to in paragraph 1 is based shall be conducted in accordance with the provisions of Appendix 2 to Annex V.

The assessment report shall be reviewed after a maximum period of three years.

3. The assessment report shall be communicated to the Commission upon request.

4. The approval authority which acts as a technical service shall demonstrate compliance through documentary evidence.

This includes an assessment conducted by auditors independent of the activity being assessed. Such auditors may be from within the same organization provided that they are managed autonomously from personnel undertaking the assessed activity.

5. A manufacturer or a subcontracting party acting on his behalf, designated as a technical service, shall comply with the relevant provisions of this Article.

Article 43

Procedures for notification

1. Member States shall notify to the Commission the name, the address including electronic address, the responsible persons, and the category of activities with respect to each designated technical service. They shall notify it of any subsequent modifications thereto.

The notification act shall state in respect of which regulatory acts the technical services have been designated.

2. A technical service may conduct the activities described in Article 41 for the purposes of type-approval only if it has been notified beforehand to the Commission.

3. The same technical service may be designated and notified by several Member States irrespective of the category of activities which it conducts.

4. Where a specific organization or competent body, the activity of which is not included in those referred to in Article 41, needs to be designated in application of a regulatory act, the notification shall be made in accordance with the provisions of this Article.

5. The Commission shall publish a list and details regarding **the approval authorities and technical services** on its website.

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Podgoritsa, Mn, 2008-2009



Annex 1

WTO/TBT Notifications*

Member	Notification and Date of Circulation	Article	Product/Measure	Objective
Albania	G/TBT/N/ALB/26 09/01/2008	2.9.2	Dangerous products on the market	Protection of human health and safety
	G/TBT/N/ALB/27 15/01/2008	2.9.2	Ionising radiation	Protection of human health and safety; Protection of the environment
	G/TBT/N/ALB/28 17/01/2008	2.9.2 5.6.2	Certification and Inspection Bodies in the field of vegetation and animal production and products called "BIO"	Regulation of certification and inspection bodies
	G/TBT/N/ALB/29 23/01/2008	2.9.2	Tobacco	Protection of human health from tobacco products
	G/TBT/N/ALB/30 28/01/2008	2.9.2	Blood and its products	Protection of human health and safety
Canada	G/TBT/N/CAN/223 09/01/2008	2.9.2	Prescription status of medicinal ingredients for human use (ICS: 11.120)	Protection of human health
	G/TBT/N/CAN/224 11/01/2008	2.9.2	Low-Speed Vehicles (ICS: 43.020)	Protection of human safety
	G/TBT/N/CAN/225 18/01/2008	2.9.2	Pork Meat (ICS: 67.120)	Consumer Protection
	G/TBT/N/CAN/226 29/01/2008	2.9.2	Prescription status of medicinal ingredients for veterinary use (ICS: 11.220)	Protection of animal health
Chile	G/TBT/N/CHL/70 30/01/2008	2.9.2	Foods	Protection of human health
	G/TBT/N/CHL/71 30/01/2008	2.9.2	Food	Public health
	G/TBT/N/CHL/72 30/01/2008	2.9.2	Confectionery products	Public health
	G/TBT/N/CHL/73 30/01/2008	2.9.2	Foods	Protection of human health; Consumer information
	G/TBT/N/CHL/74 30/01/2008	2.9.2	Vehicles	Human safety
	G/TBT/N/CHL/75 30/01/2008	2.9.2	Vehicles	Human safety

*Note: Available at WTO



Annex 2*

NATIONAL AUTHORITIES

COUNTRY	NAME	ADDRESS
AT	<u>Bundesministerium für Verkehr, Innovation und Technologie</u>	Stubenring 1, 1010 Wien, Österreich
AT	<u>Bundesprüfanstalt für Kraftfahrzeuge</u>	Trauzelgasse 1, 1210 Wien, Österreich
BE	<u>Service public fédéral Mobilité et Transports Direction générale Mobilité et Sécurité Routière</u>	City Atrium, 56 Rue du Progrès, B-1210 Bruxelles, Belgique
BG	<u>Executive Agency Road Transport Administration</u>	5 Gourko Street, 1000 Sofia, Bulgaria
BG	<u>Technical Control Inspectorate</u>	17 Hristo Botev Blvd., 1606 Sofia, Bulgaria
CY	<u>Ministry of communications & works Department of Road Transport</u>	17 Vasileos Pavlou 1425, Nicosia, Cyprus
CY	Department of Electrical and Mechanical Services	Ayiou Ilarionos, Pallouriotissa, Nicosia 1426, Cyprus
CS	<u>Ministerstvo dopravy - Ministry of Transport of the Czech Republic Vehicle Approval and legislation Department</u>	Nábř. L. Svobody 12, 110 15 Praha 1, Czech Republic
DK	<u>Færdselsstyrelsen (Road Safety and Transport Agency)</u>	Postboks 9030, 1304 København K, Danmark
DE	<u>Kraftfahrt-Bundesamt</u>	Fördestr. 16, 24944 Flensburg-Mürwik, Deutschland
EL	<u>Ministry of Transport and Communications</u>	13, Xenophontos Street, GR-10191 Athens, Greece
ES	<u>Ministerio de industria, turismo y comercio - Subdirección General de Calidad y Seguridad Industrial</u>	Paseo de la Castellana 160, 28071 Madrid, España
ET	<u>Eesti Riiklik Autoregistrikeskus (Estonian Motor Vehicle Registration Centre)</u>	Mäepealse 19, Tallinn 12618, Eesti
FI	<u>Vehicle Administration - Type Approval</u>	PL 120 (Fabianinkatu 32), 00101 Helsinki, Finland
FR	<u>DRIRE - Centre National de Reception des Vehicules</u>	Autodrome de Linas, 91310 Montlhery, France
FR	<u>UTAC - Direction Technique</u>	Autodrome de Linas, 91310 Montlhery, France
HU	<u>Nemzeti Közlekedési Hatóság (National Transport Authority)</u>	Teréz krt. 38, 1066 Budapest, Hungary



<u>HU</u>	<u>Magyar Kereskedelmi Engedélyezési Hivatal (Hungarian Trade Licensing Office)</u>	Margit krt. 85, 1024 Budapest, Hungary
<u>IE</u>	<u>National Standards Authority of Ireland</u>	Glasnevin, Dublin 9, Ireland
<u>IT</u>	<u>Ministero delle Infrastrutture e dei Trasporti , Dipartimento per i Trasporti Terrestri e per i Sistemi Informativi e Statistici , Direzione Generale della Motorizzazione e della Sicurezza del Trasporto Terrestre</u>	Via Giuseppe Caraci 36, 00157 Roma, Italia
<u>LT</u>	<u>State Road Transport Inspectorate under the Ministry of Transport and Communications</u>	Švitrigailos 42/31, 03209, Vilnius, Lithuania
<u>LU</u>	<u>Société Nationale de Certification et d'Homologation (SNCH) s.à.r.l.</u>	11, route de Luxembourg, BP 23, 5201 Sandweiler, Luxembourg
<u>LV</u>	<u>Road Traffic Safety Directorate</u>	25 Miera St., LV-1001 Riga, Latvia
<u>MT</u>	<u>Consumer and Industrial Goods Directorate</u>	2nd Floor, Evans Building, Merchants Street, Valletta VLT 03, Malta
<u>NL</u>	<u>RDW Vehicle Technology and Information Centre</u>	Postbus 777, 2700 AT Zoetermeer, Nederland
<u>PL</u>	<u>Ministry of Infrastructure, Department for Road Transport</u>	Ul.Chalubińskiego 4/6, 00-928 Warszawa, Polska
<u>PL</u>	<u>Instytut Transportu Samochodowego (Institute for Road Transport)</u>	Ul. Jagiellonska 80, 03-301 Warszawa, Polska
<u>PT</u>	<u>Direcção-Geral de Viação</u>	Avenida da República - 16, 1050 Lisboa, Portugal
<u>RO</u>	<u>Romanian Automotive Register (Registrul Auto Roman)</u>	Calea Grivitei 391 A, Sector 1, 10719 Bucharest, Romania
<u>SE</u>	<u>Swedish National Road Administration (Vägverket)</u>	78187 Borlänge, Sverige
<u>SK</u>	<u>Ministry of Transport, Posts and Telecommunications of the Slovak Republic</u>	Namestie slobody 6, P.O. BOX 100, 81005 Bratislava 15, Slovakia
<u>SL</u>	<u>Ministry of Transport of the Republic of Slovenia Directorate for Roads - Vehicle Department</u>	Tržaška 19, 1000 Ljubjana, Slovenia
<u>UK</u>	<u>Vehicle Certification Agency</u>	1, The Eastgate Office Centre, Eastgate Road, Bristol BS5 6XX, United Kingdom

*Available at WTO

