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Inland Transport Committee

Working Party on Road Transport

Group of Experts on European Agreement Concerning Work of Crews of Vehicles Engaged in International Road Transport (AETR)

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Geneva, 6 June 2012

Item 3 (b) of the provisional agenda

Programme of Work

**Development of proposals for amending the AETR Agreement, in particular
Article 22bis, including the creation of a new institutional arrangement
such as an administrative committee**

Development of proposals for amending the AETR Agreement, in particular Article 22bis, including the creation of a new institutional arrangement

Note by the secretariat

I. Introduction

1. The Expert Group on AETR, at its first session on 2 March 2012, discussed the modification of Article 22bis as to allow all Contracting Parties to have equitable rights and obligations in amending and implementing the AETR Agreement. The Expert Group's discussion focused on the manner in which a new decision making body will be set up — i.e. Administrative Committee — and related procedural aspects of how this body will function and what relationship it will have to SC.1. The Expert Group requested the secretariat to prepare a document which combines the proposal submitted by the Russian Federation during the Expert Group meeting and the procedural steps indicated in the secretariat's AETR discussion paper ECE/TRANS/2012/3 on page 25 (both annexed to this paper) into one consolidated proposal.

2. The two proposals are not quite compatible; merging the two requires, firstly, that the objectives and desired results are clarified, and secondly — and on the basis of these clear objectives — that the proposals are processed and reformulated to reflect both the position of the Russian Federation and the requested procedure by the Expert Group. On

this basis, the present document addresses some of the issues that that require clarification, in order to enable the secretariat to consolidate the proposals.

II. Clarifying the objective of amending Article 22bis: the relationship of Appendix 1B with Article 22bis and the relationship of Appendix 1B with Annex 1B of Council Regulation (EEC) No. 3821/85

3. Article 22bis stipulates **two** distinct procedures. The article refers to the procedure for amendments to introductory provisions of Appendix 1B; these provisions provide the mechanism for translating Annex 1B of Council regulation 3821/85 into terms applicable for AETR Contracting Parties. The second procedure refers to amendments to technical specifications for control devices; these technical specifications are **not** included in the AETR Agreement or its Appendix 1B. They are specified in Annex 1B of Council Regulation 3821/85.

4. Appendix 1B thus indicates how AETR Contracting Parties will apply Annex 1B, and where Annex 1B has been adapted to be compatible with AETR by means of a “translation”, a set of cross references. It follows that the rules applied by AETR Contracting Parties, are in substance those of Annex 1B of Council Regulation 3821/85; Article 22bis transposes amendments made to the Regulation’s Annex 1B into Appendix 1B, making the amendments also binding on non-EU AETR Contracting Parties. This formula was customized to ensure uniformity of applicable rules. The consolidated Appendix 1B provided by UNECE is of **documentary** and not legal value (ECE/TRANS/SC.1/2006/2/Add.1). The original EU legal texts are those to be consulted by AETR Contracting Parties, parallel to the cross-references cited in Appendix 1B of the AETR Agreement. **Currently, the AETR Agreement does not provide authenticated legal text on technical specifications for control devices.**¹

5. The question arises as to how Appendix 1B will be affected — in terms of functionality and legal applicability — after article 22bis is amended. Annex 1B of Council regulation 3821/85 is part of the EU legal order. As a result the EU legislator will always be able to make any amendments it deems necessary to its own regulation. The difference will be that after the replacement of the current article 22bis, these changes will only take effect within the EU 27 and they will not be applicable to non-EU AETR Contracting Parties. **Put simply, the EU can change its own laws whenever it wishes, and this cannot be changed by changing article 22bis. This entails the risk that two divergent frameworks will develop for control devices: the EU system and the AETR system, completely separately.**

6. **In summary**, Appendix 1B couples the AETR Agreement with the corresponding EU legislation. If Article 22bis is replaced by an Administrative Committee consisting of **all and only** Contracting Parties that will decide on technical amendments in Geneva, then Appendix 1B will inevitably have to be re-examined; if the interdependent relationship between AETR and EU is to be severed by changing Article 22bis then Appendix 1B

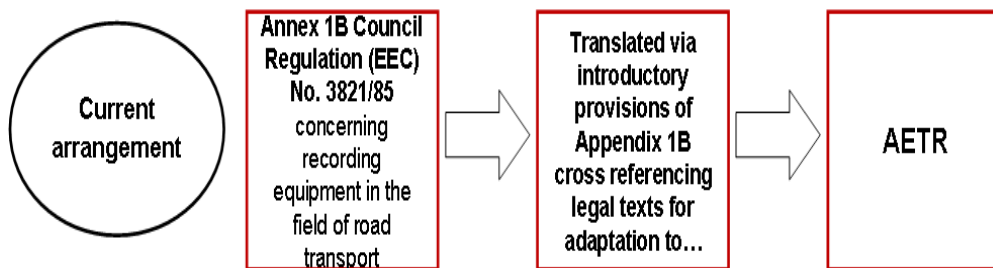
¹ Preamble of AETR Appendix 1B: “As this Appendix is an adaptation of Annex 1B of Council Regulation (EEC) No. 3821/85 of 20 December 1985 concerning recording equipment in the field of road transport 1, the content of this Annex is not reproduced in the AETR because of its size and its very technical character. For the complete official text and its subsequent amendments, Contracting Parties shall refer to the Official Journal of the European Union.”

should also be replaced with the actual rules to be applied and amended by the Administrative Committee, independently of the EU.

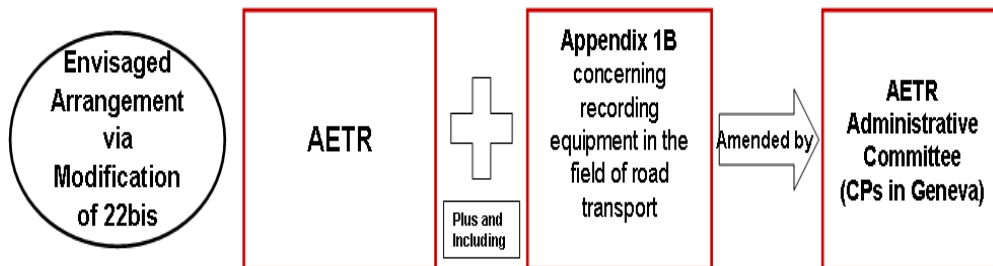
7. One way to address this is to reproduce Annex 1B of Council Regulation 3821/85 as it is today in a **new** Appendix 1B, and the Administrative Committee in Geneva will from then onwards decide on how to amend the Appendix autonomously from what the EU does internally. It is hoped that with such an arrangement, the applicable rules for all AETR Contracting Parties — including EU AETR Contracting Parties — will be set out in authenticated text in AETR Appendix 1B.

Graphic illustration of mechanism functions

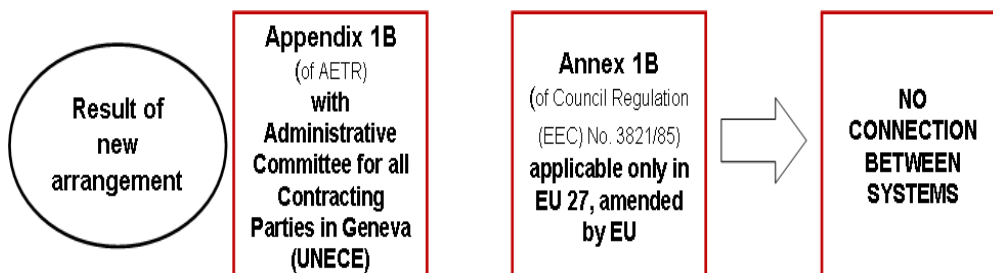
(i) **Annex 1B and Appendix 1B linked through article 22bis**



(ii) **AETR will have a full set of rules on control devices in Appendix 1B for Contracting Parties to amend in Geneva**



(iii) **The two systems will no longer be linked at all**



- (iv) Ideally the two systems should be the same to eliminate possibility for divergence



III. The proposal of the Russian Federation: Some discussion points

8. The following provides the secretariat’s analysis, interpretation and adjustment of the proposal submitted by the Russian Federation, based on an unofficial translation from Russian into English. The adjustments introduced were made without prejudice to the meaning of the proposal as intended by the Russian Federation; they were, however, necessary so as to present a comprehensive and coherent consolidation. This commentary is provided for the purpose of consolidating the proposal by the Russian Federation and the secretariat’s customized example (ECE/TRANS/2012/3), in such a way that all relevant considerations are taken into account.

A. Proposal, Russian Federation (para. 1)

Amendments to Appendix 1B of the Annex to this Agreement shall be made in accordance with the procedure defined in this article.

Comments, ECE secretariat:

9. This is a standard introductory article.

B. Proposal, Russian Federation (para. 2)

Any proposal for amendments to the introductory articles of Appendix 1B shall be adopted by the Working Party on Road Transport of the Economic Commission for Europe by a majority of the Contracting Parties present and voting. Any amendment thus adopted will be communicated by the secretariat of the Working Party to the Secretary-General for notification of all Contracting Parties. It shall enter into force three months after the date of notification of the Contracting Parties.

Comments, ECE secretariat:

10. This article prescribes amendment procedure for **introductory provisions** of Appendix 1B. Legally it is clear and straightforward. However, in light of the above analysis on the relationship of Article 22bis and Appendix 1B, there will be no introductory provisions in a new, adapted Appendix 1B.

C. Proposal, Russian Federation (para. 3)

The preparation and adoption of proposals concerning the text of Appendix 1B to this Agreement shall be made by the Administrative Committee, which shall consist of all Contracting Parties and function as part of the Working Party on Road Transport of the Economic Commission for Europe, in accordance with the procedure specified in this article.

Comments, ECE secretariat:

11. **Para. 3 first sentence:** *The preparation and adoption of proposals concerning the text of Appendix 1B to this Agreement shall be made by the Administrative Committee which shall consist of all Contracting Parties {...}*

12. This sentence describes the main function of the Administrative Committee. What is missing here is firstly, a definition of the Administrative Committee, secondly a clear clause on membership and composition and finally, a clear description of its rules of procedure (where it will be held, who will provide secretariat services, how long before meetings should proposals be submitted in writing and to whom, how will chairmanship be determined and so on). Therefore, this article may be “broken” in to three different ones for legal clarity.

13. **Para. 3 second sentence:** *{...} and function as part of the Working Party on Road Transport of the Economic Commission for Europe, in accordance with the procedure specified in this article.*

14. An Administrative Committee established under an international agreement cannot function as part of an intergovernmental subsidiary body of UNECE. As a matter of principle, legally an Administrative Committee is a separate and independent treaty body for contracting parties only. There will be a relationship with SC.1, but they cannot be merged and part of one another. However, if needed, an expert group can always be established by SC.1.

15. A body established under an international agreement carries particular weight and decision making power, which is why its most stable and effective form is to stand independently from a subsidiary intergovernmental body – however interlinked with it by channels of communication and cooperation.

16. It follows that the relationship of the Administrative Committee and SC.1 should be defined differently. One scenario would be that SC.1 would be the platform for initial discussion and consideration of proposals to be forwarded to the Administrative Committee for final decision, or alternatively SC.1 and the Administrative Committee would establish different cooperation channels that will not, however, jeopardize the stability and independence of the “highest authority” of AETR, the Administrative Committee.

D. Proposal, Russian Federation (para. 4)

At the request of any Contracting Party, any of its proposals to amend Appendix 1B of the Annex to this Agreement shall be considered by the Administrative Committee.

Comments, ECE secretariat:

17. In principle this is feasible. However it should be clarified whether Contracting Parties wish proposals to be discussed in SC.1 first and, then approved, or rejected by the AETR authoritative decision maker, the Administrative Committee.

E. Proposal, Russian Federation (para. 5)

If adopted by the majority of the members of the Administrative Committee present and voting, and if such majority includes a majority of the Contracting Parties, the amendment shall be submitted to the Working Party on Road Transport of the Economic Commission for Europe for consideration.

Comments, ECE secretariat:

18. This article is unclear in the context of the Administrative Committee. If broken into components:

(a) *majority of the members of the Administrative Committee present and voting: This means that any simple majority of the number of contracting parties in the room will suffice.*

However the second sentence specifies:

(b) *such majority has to include a majority of the Contracting Parties: This means a majority of all Contracting parties to AETR, so 51/2=26 contracting parties required to be present and voting in favour of any decision.*

19. An **ordinary interpretation** of the voting formula indicates that a simple majority of those present and voting can pass an amendment, as long as this majority is **also** at least a majority of the total of 51 Contracting Parties. That means that 26 votes are always required for any decision, and that at least 26 Contracting Parties have to be present in the room voting, given the present number of Contracting Parties (51).

20. The second problematic issue is the order in which these are considered. The last component of this article reads:

(c) *the amendment shall be submitted to the Working Party on Road Transport of the Economic Commission for Europe for consideration.*

21. The official decision-making body for AETR amendments will be the Administrative Committee (made up of Contracting Parties only). Therefore, it is logical to expect that SC.1, as the working party on general road transport issues (including legal instruments), would first consider the proposal and the Administrative Committee will approve or reject it. If it is the other way round, the Administrative Committee will be diminished to the role of a technical body with no decision-making power and SC.1 will become the decision-making power. This means that this body cannot be called an Administrative Committee – as mentioned above.

22. If Contracting Parties agree to pursue such a solution, then the option is to not have an Administrative Committee at all. Instead, SC.1 will be designated as the body responsible for decisions, with a qualified vote like the one envisaged in the proposal by the Russian Federation, where everyone will vote and the vote should include a majority of Contracting Parties. In this scenario there could be a technical body to formulate proposals (for example the Expert Group on AETR) and SC.1 will vote. For this scenario it is necessary to cite an excerpt from the AETR Roadmap: “*Such an arrangement may be considered a risky approach as any changes to the structure of the organization (this case UNECE) may have adverse effects for the functionality of the body and the implementation of the Agreements in question*”.²

² See AETR Roadmap, ECE/TRANS/2012/3, page 11, para. 31.

F. Proposal, Russian Federation (para. 6)

If adopted by the majority of the members of the Working Party present and voting, and if such majority includes a majority of the Contracting Parties, the amendment shall be transmitted to the Secretary-General for communication to the competent administrations of all Contracting Parties.

Comments, ECE secretariat:

23. This paragraph follows from the previous one. It is set forth on the premise that SC.1 is the authoritative body. It describes the second step procedure after voting in the Administrative Committee. Whether or not this will remain in the proposal will depend on whether Contracting Parties follow the model of a proper Administrative Committee, or that of SC.1 as the decision-making authority. In a proper Administrative Committee scenario, the process should be reversed. SC.1 would first discuss a proposal and transmit it to the Administrative Committee for a final decision.

24. The second element of the article proposed, referring to transmittal and communication to the Secretary-General of the United Nations, should ideally be reflected separately, as a matter of procedure. In short, actions relating to depositary notification, Secretariat involvement and other procedural matters, are better reflected separately in different articles.

G. Proposal, Russian Federation (para. 7)

The amendment shall enter into force within six months from the date of notification of the Contracting Parties or within the period specified in the text of the amendment, but not less than six months from the date of notification of the Contracting Parties.

Comments, ECE secretariat:

25. Standard procedural provision.

H. Proposal, Russian Federation (para. 8)

If a proposal for the amendment of Appendix 1B to this Agreement, leads to the amendment of other articles or annexes of the Agreement, the amendments to the Appendix cannot enter into force before entry into force of amendments relating to other parts of the Agreement. If, in such a case, the amendments to Appendix 1B are presented simultaneously with the amendments relating to other parts of the Agreement, the date of their entry into force shall be determined by the date established pursuant to application of procedures, which are described in general in Article 21, taking into account the date specified in the amendment to Appendix 1B, in the case envisaged by paragraph 7 of this article.

Comments, ECE secretariat:

26. This is a precautionary provision which is frequently used in international agreements. It is inserted based on the expectation that even rarely such an event may occur.

V. Consolidated proposal for new Article 22bis

Article 22bis

Paragraph 1 (reflecting general objective of contracting parties)

(a) There shall be an Administrative Committee that shall be responsible for deciding on amendments to Appendix 1B of the present Convention, based in Geneva.

(b) The Administrative Committee shall be composed of all the Contracting Parties to the Agreement.

Paragraph 2 (procedural provision, Roadmap, page 25)

The Administrative Committee shall be based in Geneva. Its sessions will normally be held in Geneva. The Committee may decide to hold sessions in other locations.

Paragraph 3 (procedural provision, Roadmap, page 25)

The Executive Secretary of the United Nations Economic Commission for Europe shall provide the Committee with appropriate secretariat services.

Special Consideration: The secretariat and the Contracting Parties ought to consider and make provision for the additional cost in human and financial resources for providing services for this body, as well as the requirement for sufficient secretariat expertise in such matters.

Paragraph 4 (procedural provision, Roadmap, page 25)

The Committee shall elect a chair and vice-chair every two years.

Paragraph 5 (procedural provision, Roadmap, page 25, amended)

The Secretary-General of the United Nations shall convene the Administrative Committee under the auspices of the United Nations Economic Commission for Europe up to twice per year.

Note: The Administrative Committee may be held every October, directly after SC.1. This way proposals may be discussed at SC.1 and the Administrative Committee may decide (vote) on proposals immediately after. A second session may be held if there are proposals tabled for decision that may require further deliberations. It is unlikely that any more than two sessions per year will be feasible, due to resource constraints. The secretariat will also require time for preparation and translation of documents, which will then have to be circulated to Contracting Parties well in advance to allow Governments enough time to prepare as well.

Paragraph 6 (Roadmap, page 25 proposal adapted to proposal by Russian Federation)

A quorum of not less than one half plus one (+1) of the Contracting Parties shall be required to be present for the Administrative Committee to be able to adopt decisions.

Note: With the current number of Contracting Parties (51), this means that at least 26 Contracting Parties must be represented in the room for the purpose of voting on any amendment.

Paragraph 7 (reflecting the proposal of the Russian Federation art. 4)

(a) Any Contracting Party may propose amendments to Appendix 1B of the present Convention.

(b) Any amendment proposal shall be submitted to the secretariat of the Economic Commission for Europe, in writing, 6 months before the meeting of the Administrative Committee at which it is proposed for adoption. **(procedural provision)**

Note: This is necessary in order for the secretariat to arrange for translation of proposals into three languages in time for Contracting Parties to receive them and prepare for the meeting.

(c) The text of any proposed amendment shall be communicated in the three ECE languages to all Parties at least ninety days before the meeting of the Administrative Committee at which it is proposed for adoption. **(procedural provision to allow time for preparation before meetings)**

Paragraph 8 (voting procedure)

(a) The Working Party on Road Transport (SC.1) may discuss proposals for amendments to Appendix 1B to be decided by the Administrative Committee.

(b) The Administrative Committee shall adopt decisions by majority vote of all Contracting Parties. **(reflecting the proposal of the Russian Federation, article 5)**

Note: In accordance with the proposal by the Russian Federation, this voting procedure requires that with the current number of Contracting Parties at least 26 votes in favour of any amendment are required for a decision to pass.

(c) Amendments to Appendix 1B of the present Convention adopted in accordance with paragraphs (a) and (b) above shall be communicated by the Secretary-General to all Parties for ratification, approval or acceptance. **(standard Depository notification procedure)**

(d) The amendment shall enter into force within six months from the date of notification of the Contracting Parties or within the period specified in the text of the amendment, but not less than six months from the date of notification of the Contracting Parties. **(reflecting the proposal by the Russian Federation para. 7)**

Paragraph 9 (standard procedural provision)

For the purpose of taking decisions, each Contracting Party shall have one vote.

Paragraph 10 (standard procedural provision, as proposed by the Russian Federation)

If a proposal for the amendment of Appendix 1B to this Agreement, leads to the amendment of other articles or annexes of the Agreement, the amendments to the Appendix cannot enter into force before entry into force of amendments relating to other parts of the Agreement. If, in such a case, the amendments to Appendix 1B are presented simultaneously with the amendments relating to other parts of the Agreement, the date of their entry into force shall be determined by the date established pursuant to application of procedures, which are described in general in Article 21, taking into account the date specified in the amendment to Appendix 1B, in the case envisaged by paragraph 7 of this article.

Annex I

Customized Example, (ECE/TRANS/2012/3, page 25)

Customized Example
<p>Article 1</p> <p>(a) There shall be an Administrative Committee that shall be responsible for deciding on amendments to Appendix 1B of the present Convention, based in Geneva.</p> <p>(b) The members of the Administrative Committee shall be composed of all the Contracting Parties to the Agreement.</p>
<p>Article 2</p> <p>The Administrative Committee shall be based in Geneva. Its sessions will normally be held in Geneva. The Committee may decide to hold sessions in other locations.</p>
<p>Article 3</p> <p>The Executive Secretary of the United Nations Economic Commission for Europe shall provide the Committee with appropriate secretariat services.</p>
<p>Special Consideration: The Secretariat and the Contracting Parties ought to consider and make provision for the additional cost in human and financial resources for providing services for this body, as well as the requirement for sufficient secretariat expertise in such matters.</p>
<p>Article 4</p> <p>The Committee shall elect a chairperson and vice-chairperson every two years.</p>
<p>Article 5</p> <p>The Secretary-General of the United Nations shall convene the Administrative Committee under the auspices of the United Nations Economic Commission for Europe at least once a year or at such other intervals as may be decided by the Administrative Committee, or at the request of a minimum of five Contracting Parties.</p>
<p>Article 6</p> <p>A quorum of not less than one half of the Contracting Parties shall be required to be present for the Administrative Committee to be able to adopt decisions.</p>
<p>Article 7</p> <p>Any Party may propose amendments to Appendix 1B of the present Convention. The text of any proposed amendment shall be submitted in writing to the Executive Secretary of the</p>

Economic Commission for Europe, who shall communicate it to all Parties at least ninety days before the meeting of the Administrative Committee at which it is proposed for adoption.

Article 8

(a) The Contracting Parties shall endeavor to adopt decisions of the Administrative Committee by consensus.

(b) If all efforts at consensus have been exhausted, and no agreement reached, any Contracting Party may request that a vote be taken. The amendment shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting.

(c) Amendments to Appendix 1B of the present Convention, adopted in accordance with paragraph (a) or (b) above shall be communicated by the Depositary to all Parties for ratification, approval or acceptance. Such amendment shall become effective if, within 6 months of communication, the number of Contracting Parties to object shall be less than one fifth of all Contracting Parties to the Agreement.

Article 9

(a) For the purpose of taking decisions, each Contracting Party shall have one vote.

(b) Regional economic integration organizations that are Contracting Parties to the present Convention shall have one vote. Their constituent member States that are Contracting Parties to the present Convention shall vote in accordance with paragraph (a) above.

or,

Regional economic integration organizations shall, for matters within their competence, exercise their right to vote with a number of votes equal to the number of their member States which are Parties to this Agreement. **Such organizations shall not exercise their right to vote if their member States exercise theirs, and vice versa.**

Annex II

Proposal for discussion

[Original text in Russian]

Article 22bis

Procedure for the amendment of Appendix 1B

1. Appendix 1B of the Annex to the present Agreement shall be amended according to the procedure defined in this article.
2. Any proposal to amend the introductory articles of Appendix 1B shall be adopted by the Working Party on Road Transport of the Economic Commission for Europe by a majority of the Contracting Parties present and voting. Any amendment thus adopted will be transmitted by the secretariat of the Working Party to the Secretary-General for notification of all Contracting Parties. It shall enter into force three months after the date of notification of the Contracting Parties.
3. Proposals concerning the text of Appendix 1B to this Agreement shall be prepared and adopted by the Administrative Committee, which shall include all the Contracting Parties and function as part of the Working Party on Road Transport of the Economic Commission for Europe, in accordance with the procedure provided for in this article.
4. At the request of a Contracting Party, any of its proposals to amend Appendix 1B of the Annex to this Agreement shall be considered by the Administrative Committee.
5. If adopted by a majority of the members of the Administrative Committee present and voting, and if such a majority includes the majority of the Contracting Parties, the amendment shall be transmitted to the Working Party on Road Transport of the Economic Commission for Europe for consideration.
6. If adopted by a majority of the members of the Working Party present and voting, and if such a majority includes the majority of the Contracting Parties, the amendment shall be transmitted to the Secretary-General for communication to the competent authorities of all Contracting Parties.
7. Amendments shall enter into force within six months from the date of notification of the Contracting Parties or within the period specified in the text of the amendment, but not less than six months from the date of notification of the Contracting Parties.
8. If a proposal to amend Appendix 1B to this Agreement also entails amendments to other articles of or annexes to the Agreement, the amendments to this Appendix may not enter into force before the entry into force of the amendments concerning the other parts of the Agreement. If amendments to Appendix 1B are presented at the same time as amendments concerning other parts of the Agreement, their date of entry into force shall be determined by the date resulting from the application of the procedures generally outlined in article 21, on the basis of the date specified in the amendment to Appendix 1B, in cases covered by paragraph 7 of that article.