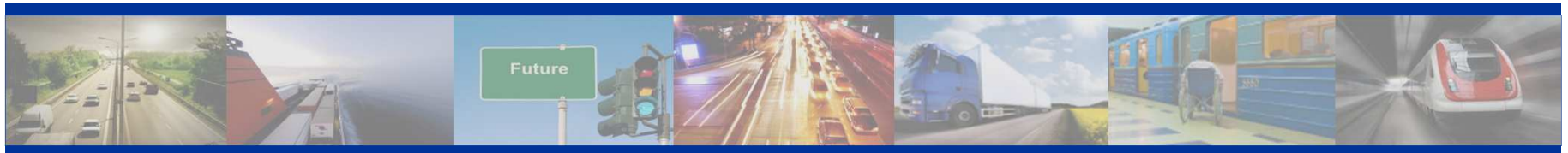




United Nations Economic Commission for Europe
Transport Division

Expert Group on AETR 2nd Session

Geneva, 6 June 2012





Agenda Item 3 (b)

Consolidated proposal for amending Article 22bis

- To define the relationship of Appendix 1B with Article 22bis and the relationship of Appendix 1B with Annex 1B of Council Regulation (EEC) No. 3821/85;
- To illustrate potential outcomes so as to clarify the objective of amending 22bis;
- To analyze the proposal submitted by the Russian Federation in light of these objectives;
- To present a comprehensive and functional proposal that meets, as much as possible, the demands of all parties involved and benefits the functionality of the agreement.





Outline of the presentation

PART 1

Legal interactions: How will the change of art.22bis affect Appendix 1B and the relationship with Annex 1B of Reg. 3821/85

PART 2

Proposal by the Russian Federation – commentary and analysis

PART 3

Consolidated proposal (secretariat Roadmap example and proposal of the Russian Federation)





The relationship of Appendix 1B with Article 22bis

Article 22bis stipulates two distinct procedures:

- 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 procedure for 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.





The relationship of Appendix 1B with Annex 1B of Council Regulation (EEC) No. 3821/85

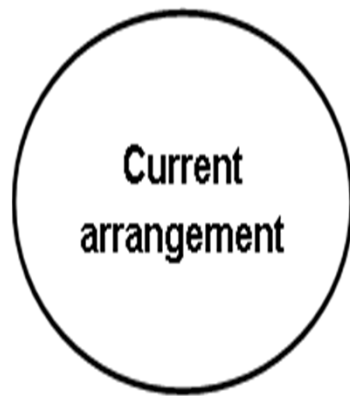
Appendix 1B indicates how AETR Contracting Parties will apply Annex 1B, and where Annex 1B has been adapted to be compatible with AETR by means of a “translation”, a set of cross references.

It follows that the rules applied by AETR Contracting Parties, are in substance those of Annex 1B of Council Regulation 3821/85.

Currently, the AETR Agreement does not provide authenticated legal text on technical specifications for control devices.



Annex 1B and Appendix 1B linked through article 22bis



Annex 1B Council Regulation (EEC) No. 3821/85 concerning recording equipment in the field of road transport



Translated via introductory provisions of Appendix 1B cross referencing legal texts for adaptation to...

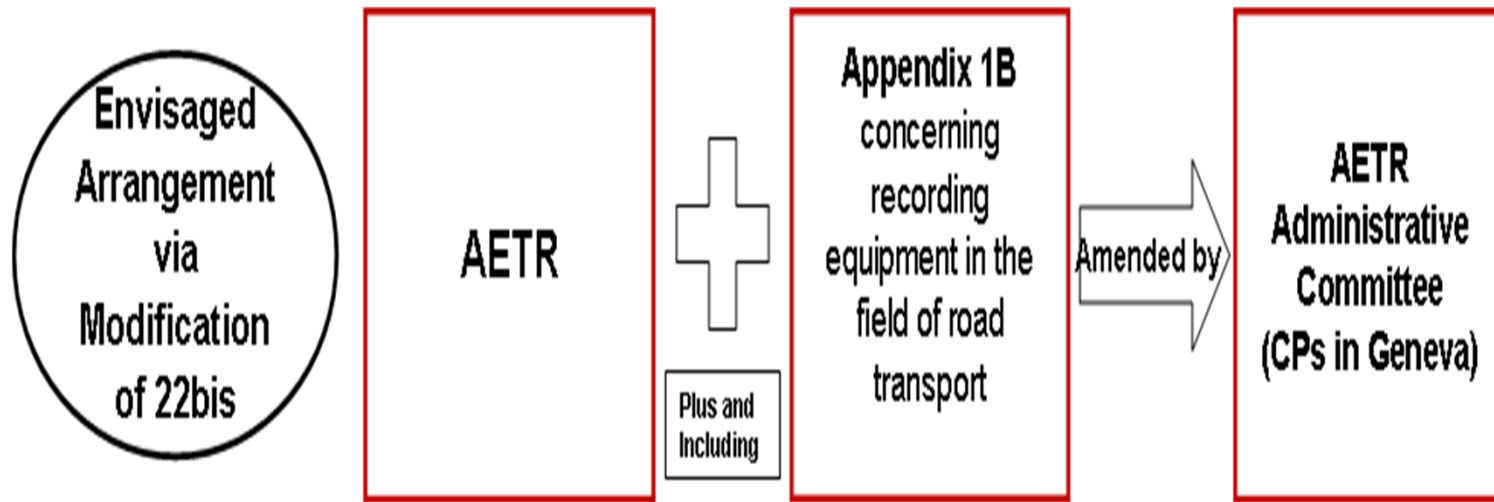


AETR



Functionality and legal applicability of Appendix 1B after article 22bis is amended

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





Functionality and legal applicability of Appendix 1B after article 22bis is amended (2)

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.





Functionality and legal applicability of Appendix 1B after article 22bis is amended (3)

Put simply, the EU can change its own laws whenever it wishes, and this cannot be changed by changing article 22bis.

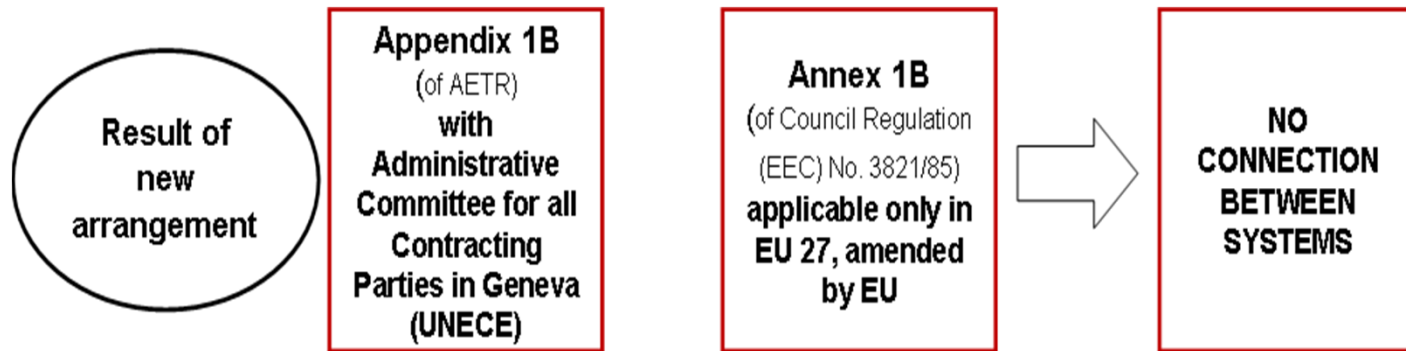
This entails the risk that two divergent frameworks will develop for control devices: the EU system and the AETR system, completely separately.





Functionality and legal applicability of Appendix 1B after article 22bis is amended (4)

The two systems will no longer be linked at all





What should be included in the new article 22bis

- A definition of the Administrative Committee;
- A clear description of its functions;
- A clear clause on membership and composition;
- A 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).





The proposal by the Russian Federation

- A large part of the proposal submitted by the Russian Federation was incorporated (paras. 3 first sentence, 4, 5 first and second sentence, 7, 8)
- Some paragraphs could not be used (paras 2, 3 second sentence, 5 third sentence, 6)
- Some paragraphs lack clarity (5 first and second sentence)





Proposal by the Russian Federation – the parts that were not used (1)

Paragraph 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.

Comment, ECE Secretariat:

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.





Proposal by the Russian Federation – the parts that were not used (2)

Paragraph 3, second sentence

{...} The Administrative Committee will 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.

Comment, ECE Secretariat

- 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.
- 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.





Proposal by the Russian Federation – the parts that were not used (3)

Paragraph 5, third sentence

{..} the amendment shall be submitted to the Working Party on Road Transport of the Economic Commission for Europe for consideration.

Comment, ECE Secretariat

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





Proposal by the Russian Federation – the parts that lacked clarity

Paragraph 5, first and second sentence

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..{..}

Comment, ECE Secretariat

(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





Consolidated Proposal (1)

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.





Consolidated Proposal (2)

Article 22bis

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.





Consolidated Proposal (3)

Article 22bis

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.





Consolidated Proposal (4)

Article 22bis

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.

Proposal, Russian Federation (para.5, first sentence)

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 {..}

Comment, ECE Secretariat

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.





Consolidated Proposal (5)

Article 22bis

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)**
- (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)**

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.





Consolidated Proposal (6)

Article 22bis

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)**

Proposal, Russian Federation (para.5, first sentence)

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 {..}





Consolidated Proposal (7)

Article 22bis

Paragraph 8 (voting procedure)

- (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)**

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.





Consolidated Proposal (8)

Article 22bis

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 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.





Conclusions

- It is necessary to carefully examine the effects of the amendment: what does it mean for Appendix 1B, how does it alter the relationship with Annex 1B of reg. 3821/85 and how will the change benefit the functionality of the agreement;
- It is necessary to take all scenarios into account when deciding on the amendment, particularly with regard to the voting formula;
- It is necessary to carefully select wording that does not leave room for misunderstandings and misuse of the provisions. Specificity is key in legal text;
- It is necessary for contracting parties to decide the exact nature of the body they wish to establish, having knowledge of legal implications. Administrative Committee or technical body?





Thank you for your attention



United Nations Economic Commission for Europe
Transport Division



Future

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