



# Economic and Social Council

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## Economic Commission for Europe

### Inland Transport Committee

#### Working Party on the Transport of Perishable Foodstuffs

##### Seventieth session

Geneva, 7-10 October 2014

Item 2 (a) of the provisional agenda

**Activities of ECE bodies of interest to the Working Party:**

**Inland Transport Committee**

## Decision making and voting rules in WP.11

### Note by the secretariat

#### Background

1. At the 76<sup>th</sup> session of the Inland Transport Committee (ITC) in February 2014, some delegations were critical of the voting procedures used by WP.11 for decision making and felt that they were hindering the proper evolution of the ATP.<sup>1</sup> This is reflected in paragraph 86 of its report (ECE/TRANS/240) reproduced below:

"The Committee noted that to match the amendment procedure laid down in the ATP itself, decisions by WP.11 on draft amendments to the ATP were taken by unanimity; further noted that there was a need to ensure the proper evolution of the ATP; invited WP.11 to assess whether there was a need to reconsider its decision-making procedure; urged Contracting Parties to refrain wherever possible from objections to amendments that hindered the satisfactory development of the ATP; ...".

2. According to WP.11's terms of reference and rules of procedure (ECE/TRANS/WP.11/229, rule 35) "Decisions regarding the ATP shall be carried by a **unanimous** vote in favour. Decisions regarding the ATP Handbook shall be carried by a majority vote in favour provided that there are no more than three votes against the proposal. All other decisions shall chiefly be taken by consensus but in the absence of consensus, decisions shall be taken by a majority of the full participants present and

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<sup>1</sup> Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for such Carriage.

voting." WP.11's Terms of Reference and Rules of Procedure were endorsed by the ITC at its seventy-third session in 2011 (ECE/TRANS/221, para. 93).

3. At the sixty-ninth session of WP.11 (October 2013), there were a total of 25 votes on proposals to amend the ATP, 4 of which were unanimous. In 9 other cases there was just one vote against a proposal which was consequently rejected. If WP.11 had had majority voting rules, those 9 proposals would have been considered accepted. The sixty-ninth session was exceptional because of the large number of documents and proposals presented for consideration.

4. At the sixty-eighth session of WP.11 (2012), there were a total of just 4 formal votes, 1 of which was unanimous. In 1 other case there was just 1 vote against the proposal. At the sixty-seventh session (2011), there were 11 votes, 2 of which were unanimous. In 2 votes, there was just 1 vote against the proposal which would otherwise have been accepted under majority voting rules.

5. What distinguishes WP.11 from other Working Parties of the Inland Transport Committee are the provisions of the ATP itself which states in Article 18.4 that in the case of proposed amendments notified to ATP Contracting Parties by the United Nations Secretary-General "If an objection to the proposed amendment is stated in accordance with the terms of paragraphs 2 and 3 of this article, the amendment shall be deemed not to have been accepted and shall be of no effect."

6. This could mean that amendments adopted by majority vote in WP.11 (with for example one vote against when considered by WP.11) could then be rejected by a single objection from the ATP Contracting Party that voted against the proposal. This is why WP.11 decided to take decisions on amendments to the ATP by unanimity and to reflect this in its rules of procedure.

7. Notwithstanding the above, WP.11 may wish to be informed of the voting practices in other subsidiary bodies of the Inland Transport Committee and consider whether a change to its own voting rules to allow majority voting might not lead to improved and more productive decision-making.

8. This may be especially relevant in light of the standards being developed by the European Committee for Standardization (CEN) that cover the same areas as the ATP (under the assumption that it will be easier to amend standards than the ATP).

### **Voting practices of other ITC subsidiary bodies**

9. The "Guidelines on procedures and practices for ECE bodies", which are contained in appendix II of ECOSOC document E/2013/37/E/ECE/1464 state under "Rules of procedure" that "All Sectoral Committees and other subsidiary bodies may adopt their own Rules of Procedure on the basis of ECE Rules of Procedure and, where applicable, Rules of Procedure of the Economic and Social Council, taking into account these guidelines. Otherwise it will be presumed that they are governed by the Rules of Procedure of the Commission and, where applicable, Rules of Procedure of the Economic and Social Council and taking into account these guidelines mutatis mutandis."

10. The secretariat has listed below the voting rules of the Economic Commission for Europe and other selected subsidiary bodies of the ITC and at the end of the document some conclusions are given.

#### **Voting rules of the Economic Commission for Europe (E/ECE/778/Rev.3, Rule 35):**

"Decisions of the Commission shall be made by a majority of the members present and voting."

**Voting rules of other subsidiary bodies of the Inland Transport Committee**

**Working Party on the Transport of Dangerous Goods (WP.15)**, (ECE/TRANS/WP.15/190/Add.1, Rule 35):

"Decisions of WP.15 shall chiefly be taken by consensus. In the absence of consensus, decisions shall be taken by a majority of the full participants present and voting. Decisions regarding a legal instrument in force shall be taken only in the presence of at least one third of the Contracting Parties, and on condition that the number of affirmative votes is equal to at least one third of the full participants represented during the vote."

**Working Party on Road Traffic Safety (WP.1)** (ECE/TRANS/WP.1/100/Add.1, Rule 28):

Decisions of WP.1 shall preferably be made on the basis of consensus. In the absence of consensus, decisions shall be made by a majority of the members of ECE, present and voting.

**Working Party on Road Transport (SC.1)** (ECE/TRANS/SC.1/396/Add.1, Rule 28):

"Decisions made by SC.1 shall as a priority be based on consensus. In the absence of consensus, decisions shall be made by a majority of the members of the ECE, present and voting."

**World Forum for Harmonization of Vehicle Regulations (WP.29)** (TRANS/WP.29/690, Rule 25):

"Decisions of WP.29 shall be made by a majority of the participants as defined in Rule 1(a), present and voting, and in accordance with Rule 24 above."

**Conclusions**

11. It can be seen that the preferred manner of decision-making by ITC subsidiary bodies is consensus but that when consensus cannot be reached, decisions may be voted on and adopted by a majority of Contracting Parties present and voting.

12. WP.11 may wish to consider changing its own Rules of Procedure to allow majority voting on the ATP rather than voting by unanimity. A decision to change its voting rules, as an issue that does not directly concern the ATP, could be taken by a majority of the full participants present and voting according to WP.11's present Rules of Procedure. However, WP.11 has to weigh up whether this might lead to a return to the situation where objections are made to proposed amendments already accepted by WP.11 and undergoing formal notification to Contracting Parties by the UN Treaty Section.

13. In 2008, the secretariat analysed objections made to amendment proposals notified in depositary notifications which appeared on the website of the UNECE Transport Division, dating from 1999.

14. It was found that of the 11 notifications of amendment proposals, five had been rejected as a result of an objection made by a Contracting Party, one had been accepted within the six-month period allowed, four had been accepted following a notification made under Article 18 (2) (b) of the Agreement and one had been objected to following a notification made under Article 18 (2) (b) by another country.

15. WP.11 has to decide whether to change its decision-making procedures by amending its Rules of Procedure to allow majority voting on proposals to amend the ATP with the possibility of an increase in objections made when proposed amendments are undergoing formal notification by the United Nations Treaty Section. Or, whether to maintain its voting

by unanimity with the risk that proposals under consideration by WP.11 can be rejected by just one country voting against.

16. Whatever the decision, WP.11 may wish to consider amending its Rule 35 to stress that reaching consensus is the preferred means of decision making and should be used before voting is employed. A possible revised text is proposed below for consideration by WP.11.

"Decisions of WP.11 shall preferably be made on the basis of consensus. Decisions regarding the ATP shall be carried by a **unanimous** vote in favour. Decisions regarding the ATP Handbook shall be carried by a majority vote in favour provided that there are no more than three votes against the proposal. All other decisions shall be taken by a majority of the full participants present and voting."

17. This would mean that WP.11 would have to make every effort to reach consensus before putting proposals to the vote.

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