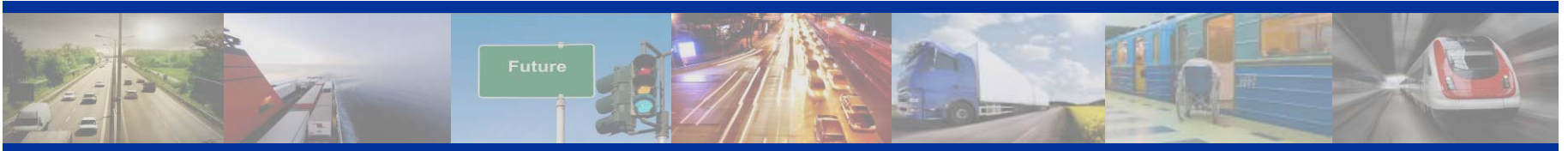




# United Nations Economic Commission for Europe Transport Division

## Expert Group on AETR 1st Session

Geneva, 2 March 2012



## AETR discussion paper (Roadmap)

- Present and analyze the operating framework of AETR and why it proves to be problematic
- Describe some of the central features of the relationship between the EU, the AETR Agreement, EU member states and non-EU contracting parties to the AETR leading to identification of problem areas
- Assess the proposals for resolving existing contradictions
- Present possible ways forward and address practical matters such as the procedural and practical steps to be taken and implications to be expected
- Offer examples of how to proceed with the foreseen amendments to the agreement.



# Terms of Reference of the Group of Experts on AETR

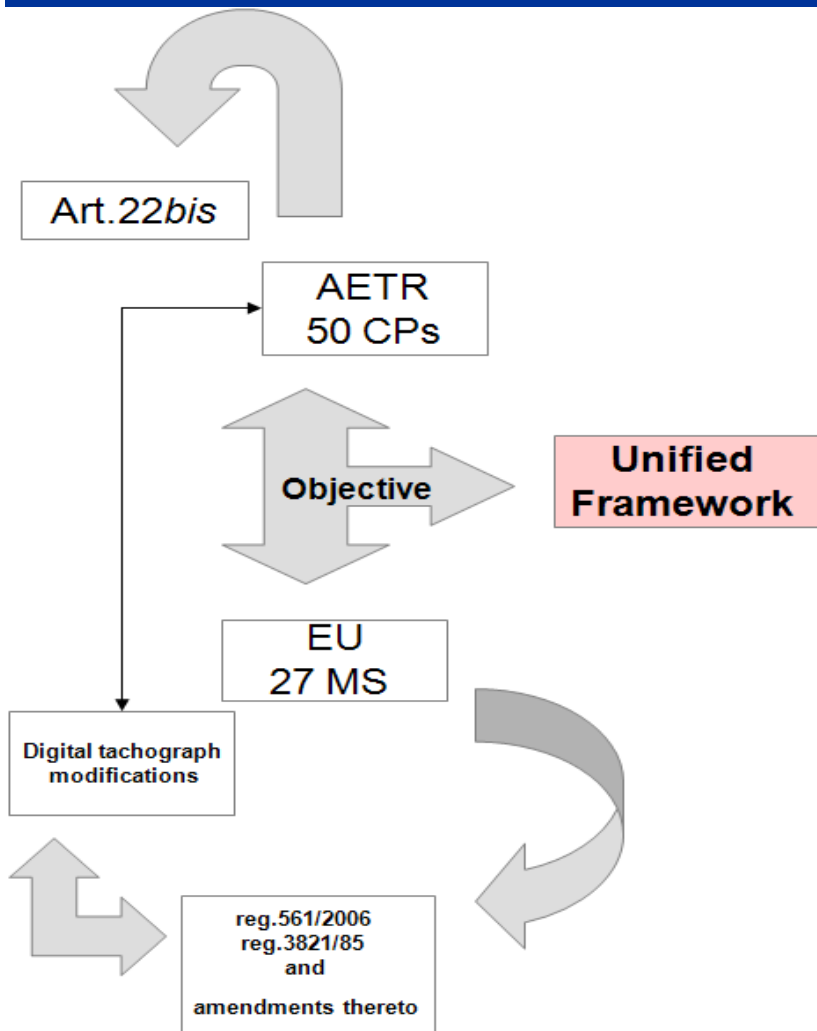
1. To develop proposals for amending the AETR Agreement, **in particular Article 22bis** (which stipulates procedure for the amendment of Appendix 1B), including the creation of a new institutional arrangement such as an administrative committee.
2. To examine, and if necessary **develop proposals to modify**, the relationship between the AETR and the corresponding EU legislation pertaining to road transport/social rules.



## Revising certain provisions in the AETR so as:

- (i) to allow accession of Regional Economic Integration Organizations into the Agreement (Article 14 AETR).
- (ii) to modify the decision-making process for technical amendments in Appendix 1B (Article *22bis*).

# Why modify the AETR?



- Similar parallel legislative frameworks on the same subject-matter
- Overlapping timeline during which the frameworks developed raising questions on:
  - Preceding and prevailing legal instrument
  - Practical matters relating to applicable rules in different cases (e.g. combined routes)
- Unconventional set-up for decisions relating to the digital tachograph creating:
  - Inter-linkages between the two regimes
  - Legal and practical tensions between EU and non-EU contracting parties

# Timeline of Events

<b>Year</b>	<b>Legislative Act or other instrument</b>	<b>Actor</b>
1962	Signing of the first AETR Agreement	States
1967	Negotiations for second AETR Agreement	States
1969	Council regulation 543/69 of 25 March 1969 on the harmonization of certain social legislation relating to road transport	EEC
1970	Signing of the second AETR Agreement	States
1971	AETR Case 22/70, European Court of Justice	Commission v. Council, EEC
1976	Entry into force of the (second) AETR Agreement	States
1977	Council regulation 2829/77 of 12 December 1977 on the bringing into force of the AETR Agreement	EEC
2006	Regulation 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonization of certain social legislation relating to road transport	EC/EU

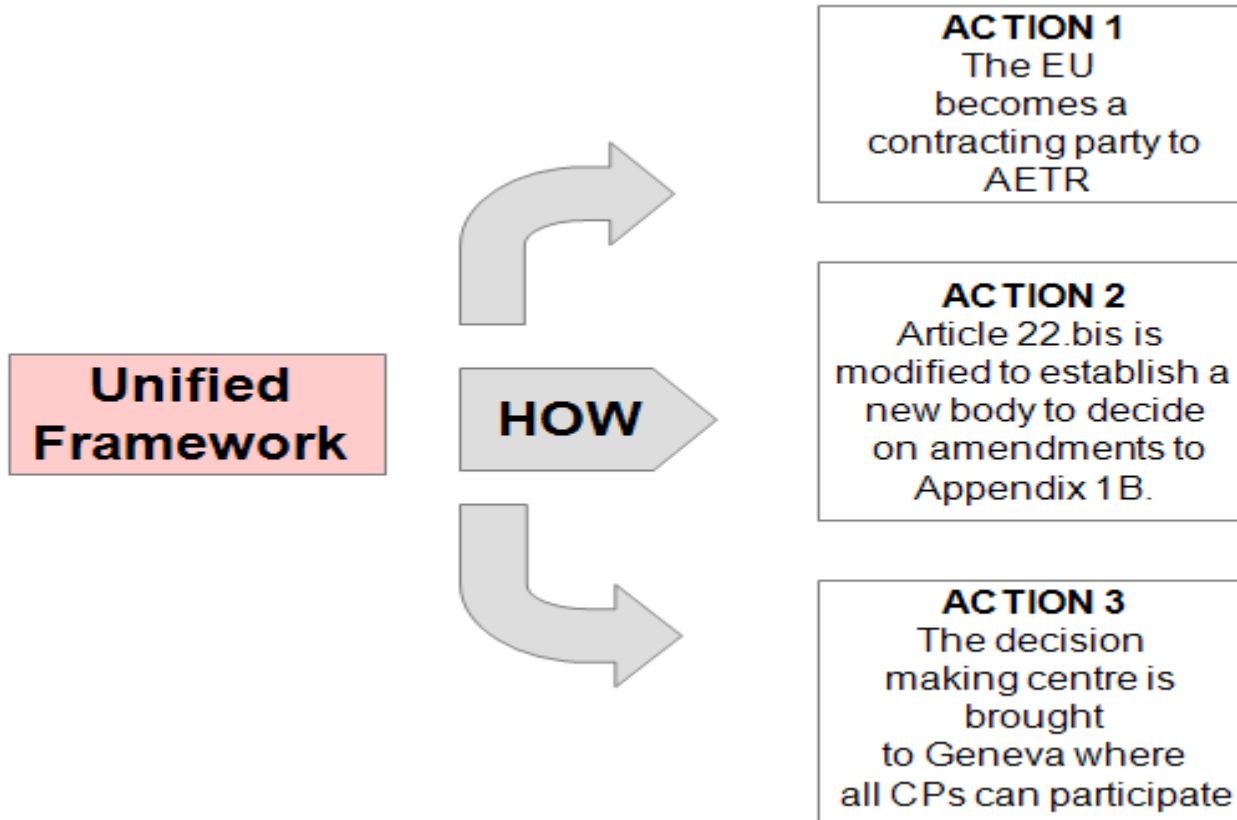


# The issue of the digital tachograph and art.22*bis*

- Council Regulation (EC) 2135/98 (amending Council Regulation (EEC) 3821/85 and Council Directive 88/599/EEC) introduces the mandatory use of the digital tachograph in the EU in **2006**
- Commission Regulation (EC) 1360/2002 introduces all technical requirements for the digital tachograph and tachograph cards.
- In the non-EU AETR countries, an additional transitional period was negotiated by Contracting Parties at UNECE. The date of entry into force of the digital tachograph amendment is in **2010**.
- As per article **22*bis* AETR**, all amendments to technical specifications or requirements for the digital tachograph that are introduced at the EU level via revisions to **Council Regulation 3821/85** are automatically transposed into the AETR Agreement, without formal consultation with non-EU Contracting Parties.

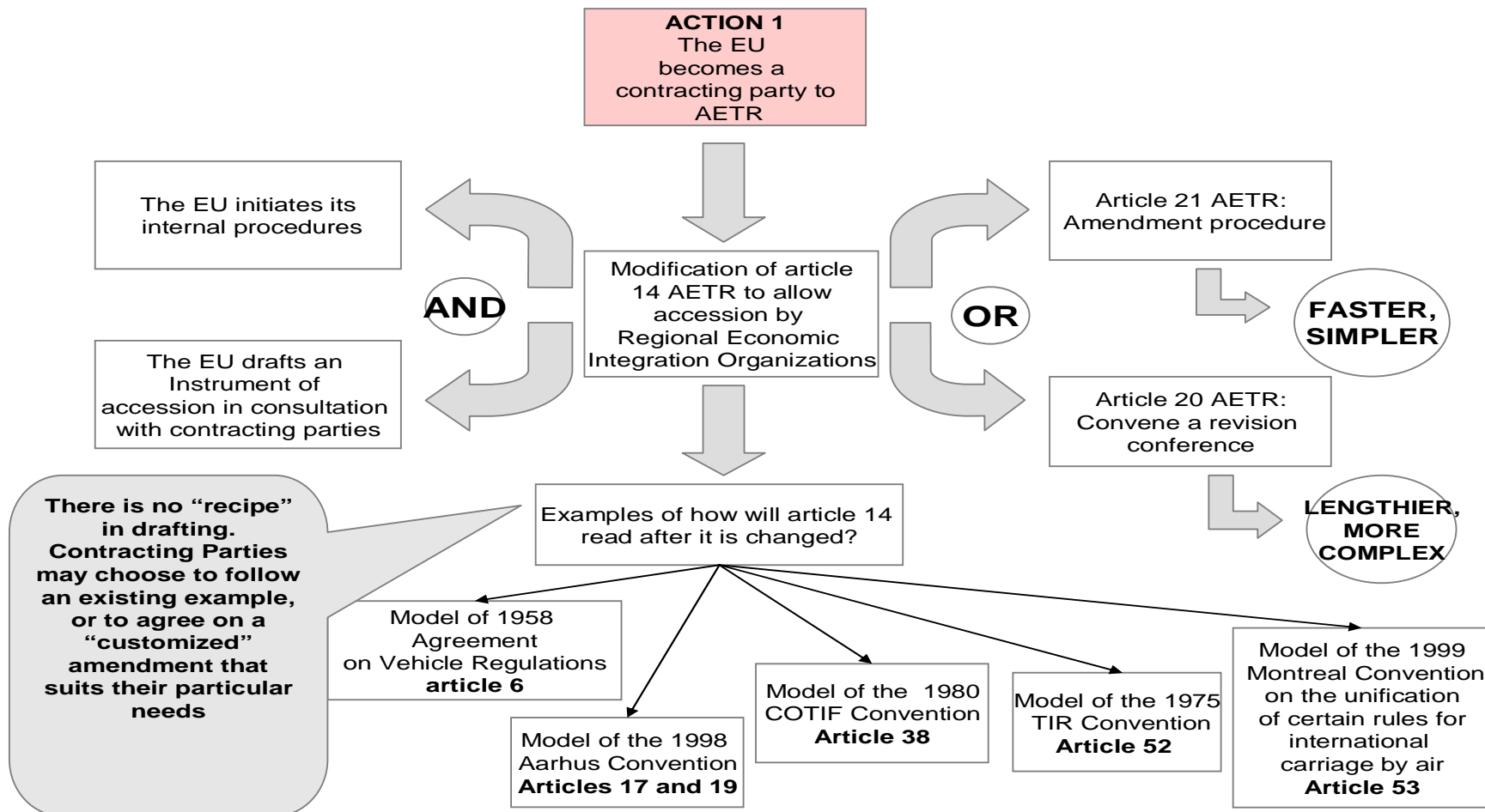


# The recommended solution





# Accession of the European Union to the AETR Agreement



Accession of the EU to an international Agreement requires, under Article 218 of the Lisbon Treaty (TFEU) and related provisions (article 207 and Title VI Part Three):

- (i) a recommendation from the Commission for a negotiation mandate;
- (ii) a unanimous Council decision to open accession negotiations;
- (iii) the consent of the European Parliament to the accession Agreement;
- (iv) In some cases ratification of the accession Agreement in all 27 EU member States is also required. The non-EU AETR contracting Parties would also have to agree to the terms of the accession Agreement.

# Deposit of the accession Agreement

The accession Agreement is in essence the instrument of accession, which includes any declarations/reservations and in the case of organizations also includes a declaration of competence.

The procedure is as follows:

- (i) The EU initiates its internal procedure (step 2);
- (ii) The Council of Ministers of the EU issues a decision stating its intent to accede to the Agreement;
- (iii) The instrument of accession, once agreed upon, is deposited with the Secretary-General of the United Nations;
- (iv) The Agreement enters into force within the time-frame specified in the Agreement (180 days for the AETR).

# The Declaration of Competence

It specifies the areas of the Agreement that fall within the EU's competence and within the competence of its member States. Simply put, the organization and its member States will decide and declare their respective responsibilities for the performance of their obligations under the Agreement. This is usual practice when the EU accedes to an Agreement (e.g. Montreal Convention, 1999).



- How will it affect the EU legal order internally and how does it relate to the application of the AETR altogether?
- What type of agreement is envisaged (mixed, exclusive, other)?
- How will it affect the position of EU Contracting parties vis-à-vis the AETR and the EU?
- What will be the EU's status within the agreement as a contracting party (e.g. voting rights and decision making processes)?

**It is premature to speculate on the specifics of voting procedures at this stage, however some points are already clear:**

- Any voting formula should allow participation by all contracting parties
- Any voting formula should ensure a clear and representative majority in the decision making process of the Agreement, taking into account:
  - The current number of contracting parties (EU and non-EU);
  - The average number of CP's present at relevant meetings

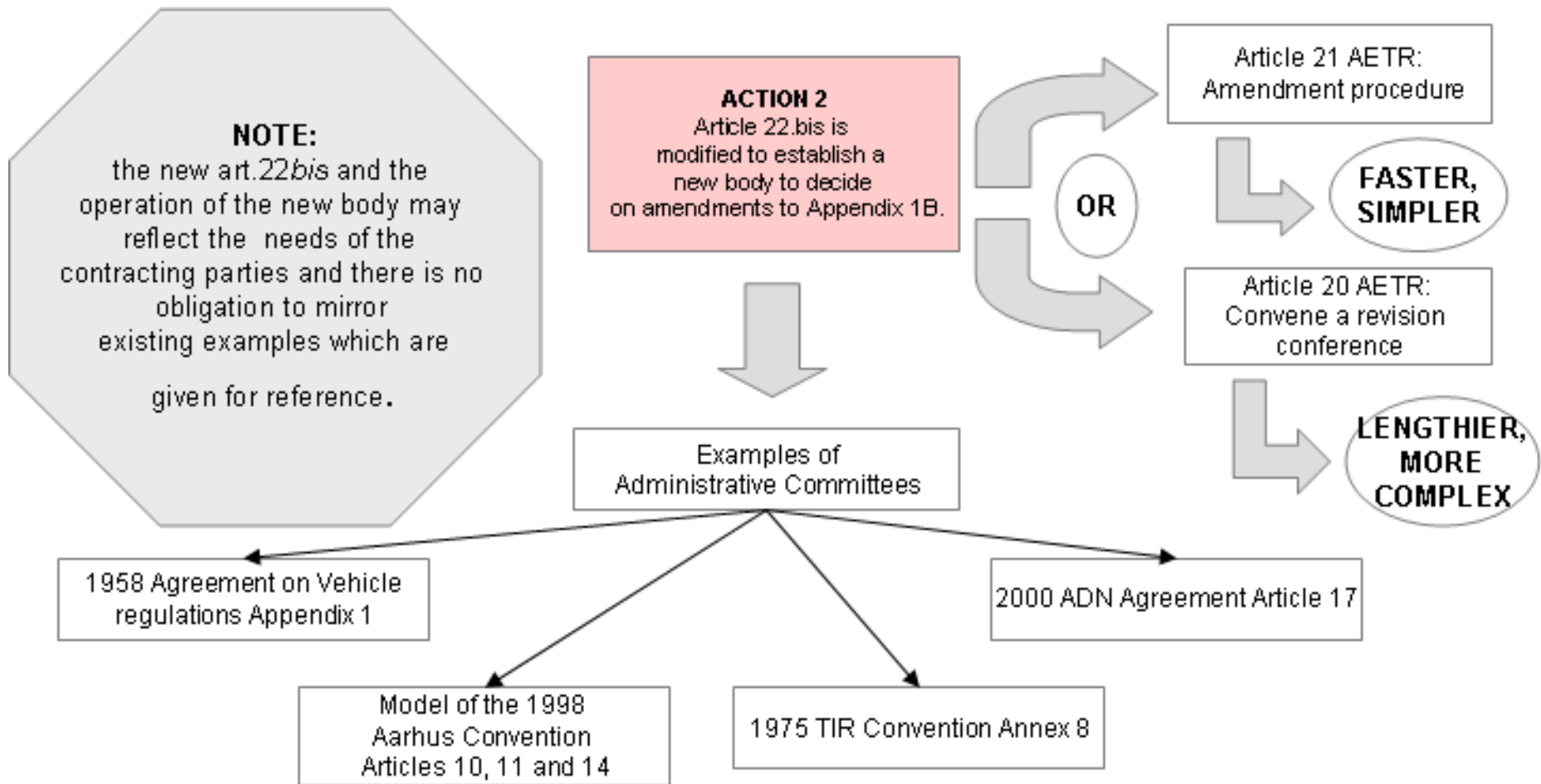
## ***Three-tier decision-making procedure:***

**Tier 1** ⇒ Amendments go to a vote in Geneva (UNECE) ⇒ Contracting Parties present and voting will aim to reach a consensus decision.

**Tier 2** ⇒ If those present and voting in Geneva (UNECE) cannot reach consensus, then the decision will be taken by a high three-quarter ( $\frac{3}{4}$ ) (for example) majority vote in favour.

**Tier 3** ⇒ The proposed amendment is communicated by the Depositary to all Contracting Parties to the AETR and if less than e.g. one-fifth ( $\frac{1}{5}$ ) of all Contracting Parties notify their objection to the proposed amendment within a specified period of time (e.g. 6 months), the amendment is considered adopted and becomes effective for all Contracting Parties.

# Revision of art.22bis and establishment of a new Treaty body







# What is a Treaty body/ Administrative Committee

- A designated intergovernmental body – customarily composed of Contracting Parties – which is authorized, under the Agreement, to make decisions relating to implementation and/or amendments to part or whole of the agreement. In most cases this body is regarded as an independent Treaty body, which is nonetheless hosted by the organization holding the responsibility for administering the Agreement, and which also offers Secretariat services.
- Sometimes an agreement is integrally linked with an organization because the treaty body in question may be in fact an intergovernmental subsidiary body of the organization itself. (E.g. AGTC and AGC both administered by UNECE)
- This 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.





# AETR: three distinct amendment procedures for different parts of the Agreement

- Currently no single treaty body fulfilling these functions.
- The practice for amendments and decisions relating to the main part of agreement is that of Depositary notification, which States Parties may accept or object to.
- Discussions take place within the framework of UNECE's Working Party on Road Transport (SC.1) however this is not stipulated in the AETR Agreement itself. Rather, it is mandated by the Working Party's Terms of Reference.
- The situation is different as regards amendments to Appendices 1 and 2 of the Annex to the Agreement. Article 22 stipulates that SC.1 will discuss and vote on proposed amendments, by majority of all members present – qualified by majority of present Contracting Parties.
- The procedure becomes different again with regard to Appendix 1B of the Annex. As per article 22bis, such amendments are initiated at the EU level and transposed into the AETR Agreement, where they become binding for all Contracting Parties.



## **A new decision-making body for amendments to Appendix 1B only**

- A new Treaty body that would take the form of an Administrative Committee, composed of all Contracting Parties to AETR. As per the terms of the AETR Agreement, this would be made possible by amending the existing art.22*bis* and replacing it with a new set of provisions.
- The relationship of this committee and its procedures to the Working Party on Road Transport (SC.1) should be clarified. The involvement of a Working Party is usually that of the first discussion platform, where proposed amendments are discussed and negotiated. Once a proposed amendment is fine-tuned and agreed upon informally at Working Party level, it is passed on to the Administrative Committee for final decision and approval.
- The voting procedures for the AC should also be decided.

# What next?

## **Contracting Parties and the European Commission are invited to consider:**

- The modalities and circumstances under which art.14 will be modified, leading to EU accession (accession clause, type of agreement, decision making processes under the amended agreement etc)
- The exact nature of the Treaty body they would like to establish, its relationship to SC.1, the tasks it will be charged with and the manner in which decisions will be voted on.
- The preferred process for introducing the amendments (art.20 or 21 AETR)
- The benefits of introducing all modifications in a “package” manner.

