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Other business:

Consideration of proposals for amendments to the WP.29 Rules of Procedure

Proposals for amendments to the Rules of Procedure of the World Forum for Harmonization of Vehicle Regulations

Note by the secretariat*

I. Background and mandate

1. At its 121st session in June 2016, the Administrative Committee for the Coordination of Work (AC.2) endorsed a proposal from Japan, the United States of America and the European Union on actions by the secretariat to increase transparency of the World Forum activities, in particular by easing participation of stakeholders by providing the related information on its website for individuals and non-governmental organizations (NGOs) (ECE/TRANS/WP.29/1123, para. 14).

2. Following the above request, the secretariat prepared proposals for draft amendments to the WP.29 Rules of Procedure (RoP) aimed at facilitating participation of non-governmental stakeholders in WP.29 meetings (Informal documents AC.2-122-05 and AC.2-124-07). These proposals were considered by AC.2 at several sessions. At its 124th session, AC.2 requested the secretariat to prepare draft amendments to the WP.29 RoP for consideration by WP.29 at its 173rd session in November 2017 (ECE/TRANS/WP.29/1131, para. 18).

* In accordance with the programme of work of the Inland Transport Committee for 2016–2017 (ECE/TRANS/254, para. 159 and ECE/TRANS/2016/28/Add.1, cluster 3.1), the World Forum will develop, harmonize and update Regulations in order to enhance the performance of vehicles. The present document is submitted in conformity with that mandate.

II. Rules of Procedure of WP.29, UNECE and subsidiary bodies

3. Participation of various stakeholders in WP.29 meetings could be an important element of increasing transparency of the World Forums activities. However, Rule 1 of the current WP.29 RoP (TRANS/WP.29/690, Amend. 1 and 2) restricts such participation to countries, the United Nations specialized agencies, intergovernmental organizations and NGOs which have been granted consultative status by the Economic and Social Council (ECOSOC). A number of NGOs in vehicle construction and related fields have obtained this status and participate in WP.29 sessions. Some others have not applied for this status, probably due to the formalities associated with the ECOSOC status. Nevertheless, those NGOs may well be interested in attending WP.29 (and its subsidiary bodies) meetings, and their participation may be beneficial for the WP.29 work. Participation of individuals is not foreseen by WP.29 RoP.

4. The WP.29 RoP are tacitly based on the UNECE Terms of Reference and Rules of Procedure. In fact, WP.29 should not necessarily follow those, because UNECE grants its subsidiary bodies autonomy and flexibility in performing their mandated tasks. According to Rule 18 of the UNECE RoP, "*subsidiary bodies shall be given as much autonomy as may be necessary for the effective discharge of the technical responsibilities laid upon them*". Rule 20 reads "*Subsidiary Bodies shall adopt their own Rules of Procedure unless otherwise decided by the Commission*".

5. As the outcome of the review of the 2005 reform of UNECE, the UNECE Commission approved harmonizing procedures and practices and requested the Executive Committee (EXCOM) to ensure that all subsidiary bodies and the secretariat apply the Guidelines on Procedures and Practices as contained in Annex III to document E/ECE/1468 of 2013. Article 2 of these guidelines stipulates 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 ECOSOC, 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 ECOSOC and taking into account these guidelines mutatis mutandis".

6. A number of ITC subsidiary bodies have taken the advantage of the above UNECE approach and adopted their own Rules of Procedure. In particular, these bodies have softened the strict participation criteria to facilitate cooperation with private sector, individual experts and academia. Examples of such facilitating provisions are given below:

"Non-governmental organizations not in consultative status with the Economic and Social Council may, subject to the approval of [the name of an intergovernmental body] and respecting the principles set forth in Economic and Social Council resolution 1996/31, parts I and II, participate in a consultative capacity in discussions that [the body] may hold on any matter of interest to these organizations."

"[The name of an intergovernmental body] may invite to its sessions, through its Chairman, any organization or expert that it considers as being of use to take part in its work."

III. Further considerations by the secretariat

7. As indicated above, the current WP.29 Rules of Procedure are restrictive for the participation of observers. On the one hand, they give a legal basis for avoiding participation of NGOs, whose activities are not relevant for WP.29, and of companies and individuals, like

inventors and patent holders, wishing to promote their products. On the other hand, they restrict the right of WP.29 to invite organizations and experts who could contribute to its work. In this context, it should be noted that participation at the invitation of the Chair or the secretariat does not have legal grounds and might lead to complaints of those organizations to whom such invitations are not extended.

8. Should WP.29 wish to have more flexibility, it had to modify its RoP by explicitly allowing other NGOs to participate in a consultative capacity, subject to prior approval of WP.29. To obtain approval, it could be envisaged that an applicant should submit a written application to the secretariat, which should specify the agenda item(s) under which the applicant would like to make a contribution and should contain a commitment to respect the principles set forth in ECOSOC Resolution 1996/31. The application should then be considered by WP.29 and/or AC.2 at the first opportunity and a decision should be taken whether or not to allow the applicant's presence in the meeting room. Approval, if granted, should also specify its duration.

9. It remains to be seen if WP.29 would like to take decisions on a case-by-case basis or to come up with strict additional conditions. In this regard, ECOSOC Resolution 1996/31 already provides a comprehensive set of principles for the mechanism of consulting NGOs. Adding one more layer of bureaucracy could be time consuming to verify if the conditions are met and could again restrict the flexibility of WP.29 to take decisions in non-standard situations.

10. For participation of experts in their individual capacity, Rule 30 of the WP.29 RoP stipulates that "AC.2 may invite other persons to participate in a consultative capacity". This provision could also be extended to participation in WP.29 sessions.

IV. Views by AC.2

11. At its 122nd and 123rd sessions, AC.2 raised a number of issues with the aim to ensure equal treatment of observers and to establish a clear-cut legal basis for their participation in WP.29 sessions. At its 124th session, AC.2 reiterated the need to raise transparency of the work of WP.29 and stressed that the approval process for observers should be as fast as possible. AC.2 also agreed in principle with the approaches as introduced in paras. 8 and 10 above.

V. Proposal

12. Based on the above considerations, the following amendments to the WP.29 Rules of Procedure are proposed:

Rule 1, add new subparagraphs (d) and (e) to read:

"(d) Non-governmental organizations (NGOs) not in consultative status with the Economic and Social Council may participate in a consultative capacity, subject to prior approval of the Administrative Committee for the Coordination of Work (WP.29/AC.2). To obtain approval, an NGO shall submit a written application to the secretariat. The application shall contain a commitment to respect the principles set forth in ECOSOC Resolution 1996/31 and shall specify the number(s) of WP.29 session(s) and agenda item(s) under which the NGO would be prepared to make a contribution. The secretariat shall transmit such applications to the first forthcoming session of WP.29/AC.2. WP.29/AC.2 shall consider any new application received since its previous session and shall decide

whether or not approval may be granted. If granted, approval shall specify its duration and relevant numbers of WP.29 sessions.

(e) WP.29 may, through its Chairman, invite other persons to participate in its sessions in a consultative capacity."

13. The World Forum is invited to consider the above proposals and provide guidance to the secretariat.
