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Item 4 (b) (i) of the provisional agenda

**Customs Convention on the International Transport
of Goods under Cover of TIR Carnets (TIR
Convention, 1975) – Revision of the Convention:
Amendment proposals to the Convention**

Administrative Committee for the TIR Convention, 1975

Sixty-first session

Geneva, 11 June 2015

Item 5 (b) of the provisional agenda

**Revision of the Convention –
Proposals transmitted by the Government of the
Russian Federation**

Comments to amendment proposals submitted by the Government of the Russian Federation

Note by the secretariat

I. Background and mandate

1. At its ~~previous~~^{138th} session, the Working Party held first considerations of document ECE/TRANS/WP.30/2014/17, transmitted by the Government of the Russian Federation, on proposals to amend the TIR Convention. The main aim of these proposals, in the view of the Russian Federation, is to (a) strengthen the control function of the Administrative Committee (AC.2); (b) provide more transparency in the functioning of the international guarantee system; (c) offer immediate and full compensation in case of losses to the state budget; and (d) reform the TIR Executive Board. The Working Party also took note of Informal document WP.30 (2014) No. 11 by the International Road Transport Union (IRU) which supported these proposals. The Working Party may wish to discuss proposals transmitted by the Government of the Russian Federation as well as the comments on the various amendment proposals received by the secretariat and contained in document ECE/TRANS/WP.30/2015/1. For the sake of clarity, the secretariat first reproduces the text of the concerned amendment proposal by the Russian Federation, followed by comments received up and until 21 November 2014. Finally, the document contains amendment proposals to various provisions of the body of the Convention as well as of Annex 9, submitted by the Government of the Russian Federation, contained in

¹ Amendments as compared to document ECE/TRANS/WP.30/2015/1–ECE/TRANS/WP.30/AC.2/2015/7 are in *italics underlined*, deletions are in ~~strike through~~.

ECE/TRANS/WP.30/AC.2/2014/14, together with comments thereto by the International Road Transport Union (IRU).

Ib. At its previous session, the Working Party decided to revert to discussing the amendment proposals in ECE/TRANS/WP.30/2014/17 and ECE/TRANS/WP.30/AC.2/2014/14 at its next session. Delegations were invited to transmit any further comments to all proposals to the secretariat by 1 April 2014² (ECE/TRANS/WP.30/278, para 15). This revision consolidates all comments received³ until the deadline of submission of documents for translation, including those contained in document ECE/TRANS/WP.30/2015/1/Add.1–ECE/TRANS/WP.30/AC.2/2015/7/Add.1 (contribution by Iran (Islamic Republic of)). The comments by the Government of Ukraine in Informal document WP.30 (2015), No. 6 (Russian only) will be circulated separately, in document ECE/TRANS/WP.30/2015/15.

II. Various amendment proposals by the Russian Federation contained in document ECE/TRANS/WP.30/ 2014/17 and comments thereto

(a) Annex 9, Part I, paragraph 3 (ii)

For determined by the Contracting Party which may be claimed from the national association *substitute* which may be claimed from the national association if a maximum amount is determined by the Contracting Party (ECE/TRANS/WP.30/2014/17).

Comments by Belarus

2. The State Customs Committee of the Republic of Belarus (GTK) supports the idea to renew discussions of the issue on the maximum level of guarantee per TIR Carnet. According to GTK, the submission of amendments of subparagraph (ii), Annex 9, Part I, paragraph 3 should be considered together with amendments to Article 8, paras. 1–3 of the Convention.

Comments by the European Union (EU) and its member States

3. The EU is of the opinion that the current guarantee system allows for a flexible approach by Contracting Parties to decide on the level of the guarantee. The maximum level of guarantee per TIR Carnet is in the EU fixed at € 60,000. However, as practice shows, the system of TIR guarantees might not correspond to the needs of the customs authorities of some Contracting Parties (outside the EU) to protect their state revenues. In cases where the guarantee level is not sufficient, some Contracting Parties use customs escorts and others require additional guarantees, such as an additional voucher with a guarantee for € 100,000 introduced in the TIR+ project with the IRU. The EU is of the view that these practices cannot be regarded as an ideal solution. In the case of the TIR+ project it is not even provided for in the Convention. The issue of the use of additional guarantees as well as the introduction of a more flexible application of the guarantees is one of the important topics currently discussed within the TIR Executive Board (TIRExB). The EU suggests submitting and adding the Russian proposal to the discussion of TIRExB so that it can lead to a proposal to be submitted to AC. 2. Nevertheless, the EU is willing to further discuss this proposal as well as a possible TIRExB proposal. In that context, one should

² In an e-mail of 18 February 2015, soliciting comments, the secretariat requested delegations to submit their contributions not later than 15 March 2015, in order to allow for due processing and translation of the contributions.

³ Contributions are reproduced as received.

also consider that in order to introduce any change to the guarantee system, other provisions of the TIR Convention, such as Article 8, should be taken into account.

Comments by Switzerland

4. The Swiss customs administration (AFD) is not opposed to reconsidering the amount of the TIR guarantee. In this context, Contracting Parties are reminded that, at present, the Swiss national guaranteeing association provides a guarantee up to SwF 100,000. However, the Russian proposals go way further, considering that each Contracting Party will fix its national level of the guarantee. In such situation, there would, contrary to the situation at present, no longer be any harmonization at the international level. In that context and by way of example, AFD would also like to evoke that no maximum level of guarantee is stipulated by the Convention on Temporary Admission of 26 June 1990 (Istanbul Convention). At the same time, this Convention contains strict provisions with regard to claiming import duties by Contracting Parties and the payment by national guaranteeing associations. In conclusion, this matter would benefit from detailed discussions.

Comments by Turkey

5. The proposal is aimed at ensuring that the customs duties are duly recovered in the case of an irregularity in the TIR System. Collection of customs duties in full form and the preclusion of evasion are the important objectives of a State.

6. In this context, the proposal is seen as a measure in an effort to uphold the revenue of the Contracting Parties. While fully recognizing that the main function of an Administration to ensure collection of duties, the Turkish Customs Administration believes that there has to be a balance not to undermine the global functioning of existing system. From this point of view, while examining the proposal, the intention and goals of the TIR Convention should also be taken into consideration. The TIR System aims at facilitation of transit transport of goods thanks to its mechanism which paves the way for expeditious and effective transport operations to be carried out. Providing a guarantee, use of TIR Carnets brings simplification of formalities and thereby ensures less waiting times at border crossing points and lessens the total time of a given transport operation.

7. Meanwhile, transport companies involved in the TIR System are admitted by the national customs authorities and national associations involved in the guarantee chain. That is to say, the system is based on credibility and trustworthiness. If an abrogation related to setting a maximum amount is brought into force, this would directly elude the use of default systems with regard to transit operations by the Contracting Parties, i.e. national procedures.

8. Therefore, lifting the limit on maximum amount might not be serving the purpose of the TIR Convention. There has to be a 'transparency principle' for the operations. As the operators will also be passing through the 'en route' countries, Contracting Parties should at least reach a compromise at the lowest common denominator. That is why efficiency of the TIR System might be neutralized in the case of an exemption.

9. Having examined the proposals with attention, it is considered that instead of changing the principles of the system in an effort to solve the ongoing problems, it might be more appropriate to pass on to a flexible system and determine the amount separately for certain group of goods which require a higher amount for customs duties. From this point of view, considering the application of variable rate of guarantees deserves closer examination. Otherwise, the approach aimed with the amendment proposal might be perceived that the TIR guarantee system will completely be exempted from a certain limit and create an automatic payment mechanism.

10. Another option might be to increase the maximum fixed assurance amount of the TIR Carnets. This option needs to be examined also by the Contracting Parties.

11. After careful consideration, the Turkish Customs Administration appreciates the significance that the Russian Federation attributes to the TIR system. The Turkish Customs Administration considers that these proposals merit consideration and should be discussed in a broader sense.

Comments by Ukraine

12. Due to an ongoing reorganization of the Ministry of Revenue and Duties of the Ukraine, transforming it to the State Fiscal Service, we propose to discuss the Russian proposals in extenso at the forthcoming session of WP.30. By that time, Ukraine will be ready to submit a package of proposals to amend the TIR Convention.

Comments by the International Road Transport Union

13. IRU supports the initiative of the Russian Federation to reopen the important question concerning the maximum guaranteed amount and is not opposed to the proposed change to Annex 9, Part I of the TIR Convention, which could be considered in parallel with Article 8, paragraph 3 of the TIR Convention. IRU specifically mentioned during the [June 2014] WP.30 session that it is ready to "re-examine the issue of the guarantee level".

Comments by Iran (Islamic Republic of)

13bis. Iran (Islamic Republic of) generally agrees with this proposal. However, in order to facilitate trade and transport, Iran would like to discuss the possibility of introducing flexible guarantees. In case the recently introduced TIR+ higher level guarantee (of an additional 100,000 €) by the International Road Transport Union (IRU) could be included in the TIR Convention, this would increase the guarantee provided by the TIR Carnet, thus making the TIR guarantee more secure for customs procedures.

(b) Annex 8, Article 1 bis

After the existing text *introduce* new paragraphs 4 and 5:

“4. The Committee shall conduct regular examinations of all records and accounts of the international organization in order to ensure the effective organization and functioning of the international guarantee system relation to the application of the Convention, with subsequent disclosure of the results of such examination to the Contracting Parties. Such examination shall be conducted at least once a year.

5. As part of the examination mentioned in [sub]paragraph 4, the Committee shall carry out independent audits of the activities of the international organization and guaranteeing associations, with subsequent disclosure of the results to the Contracting Parties (ECE/TRANS/WP.30/2014/17).”

Comments by Belarus

14. GTK supports the proposal to amend Annex 8, Article 1 bis to extend the competence of AC.2 to conducting regular examinations of the all records and accounts kept by IRU in relation to the application of the Convention.

Comments by the EU and its member States

15. The EU welcomes any proposal which would achieve full transparency of the financial issues related to the functioning of the TIR system. In this sense, the EU also suggested to continue discussing the amendment proposals to the TIR Convention relating to the audit requirements for an authorized international organization. The EU also supports the request made by the TIRExB to UNECE to seek advice on the implementation of the

new obligations under Annex 9, Part III and on the proposed provisions (so called o, p, q) from the United Nations Office of Internal Oversight Services (OIOS) as reported in ECE/TRANS/WP.30/276, para. 21. The EU will therefore be attentive to further explanations on this proposal from the Russian Federation.

Comments by Switzerland

16. According to the proposed paragraph 4, Contracting Parties should conduct regular examinations of all records and accounts of the international organization. The proposed paragraph 5 stipulates that the carried out audits have been conducted independently. In the view of AFD there seems to be a contradiction between these two provisions. Usually, the bodies authorized to conduct such audits are trusted international companies, which operate independently from their clients. This being the case, AC.2 could be informed of the results of the audit and invite, if required and in consultation with the international organization, a representative of the audit company to participate in its meetings. It goes without saying that the examinations by AC.2 are limited to the application of the TIR Convention by the concerned international organization. In conclusion, this proposals requires further discussions.

Comments by Turkey

17. Delegation of authority to AC.2 to conduct periodic examinations of all records and accounts of the International Road Transport Union relating to application of the Convention, with subsequent disclosure of the results of such examination to the Contracting Parties, is seen as a move towards transparency and accountability of the international organization. It would reinforce the well-being and success of the TIR system.

18. On the other hand, the amendment proposal to subparagraph 5 contains “carry[ing] out independent audits” as well, which most probably might bring a requirement for a matter of financial resources. Without addressing the financial background of the foreseen activity, the arrangement might remain ineffective. Accordingly, the wording of the proposal to subparagraph 5 might be edited in order to give AC.2 the option for choosing the way on how it fulfils this mandate by using the word “may” instead of “shall.”

19. In fact, the proposal has virtually the same content with the proposal which came up with the amendment packages and the approval of the revaluation process of the articles (o), (p) and (q) in Annex 9, Part III. Therefore, it would be more appropriate to unite this proposal together with the already existing studies.

Comments by the International Road Transport Union

20. IRU is not opposed to providing requested documentation, or to undergoing a specific audit related to the management of the TIR system that may be required by virtue of the TIR Convention, as results from its current version or would result from any amendment.

21. During the [June 2014] WP.30 meeting, IRU already supported the idea of including "more transparency requirements in the convention".

22. Moreover, following an informal meeting of some of the main stakeholders that took place during the WP.30 session in June 2014, it "transpired that a compromise could be found on the wording" of the so-called audit provisions and the secretariat was invited to present a new document on the matter for the October 2014 session.

23. IRU is in close contact with the United Nations Economic Commission for Europe (UNECE) and is optimistic that the text that will be provided to Contracting Parties in October 2014 will prove to be acceptable for all stakeholders in order to allow the amendment of Annex 9, Part III of the TIR Convention, so that the amendment to Annex 8 as proposed by the Russian Federation may no longer be necessary.

(c) **Various amendment proposals to harmonize the terminology used in the Convention**

(i) **Article 1, paragraph (q), line 1–2**

After authorized delete the customs authorities (ECE/TRANS/WP.30/2014/17).

Comments by Belarus

24. Article 1, paragraph (q) of the TIR Convention, which defines the competence of Customs authorities concerning authorizing an association to act as guarantor for persons using the TIR procedure, is also incorporated in the national legislation of the Republic of Belarus. In addition, during a transport of goods under cover of a TIR Carnet, including in case of non-delivery of the goods, the guarantee association and Customs authorities work closely together. On that basis, GTK does not support the amendment of Article 1, paragraph (q), excluding the recognition of a guarantee association from the competence of Customs authorities.

Comments by the EU and its member States

25. The EU agrees that Article 1, paragraph (q) should be in conformity with Article 6, paragraph (1) and that the phrase 'Customs authorities' be deleted. However, the use of a phrase 'the competent authorities of the Contracting Party' from Annex 9, paragraph 1 (d) should be taken into consideration. Moreover, the Explanatory Note to Article 6, paragraph 2 should be adjusted accordingly.

Comment by Switzerland

26. It should be stated that the TIR Convention is a customs convention. Thus, it belongs to the customs authorities to authorize national associations. However, replacing 'customs authorities' by 'competent authorities' could be envisaged.

Comments by Turkey

27. The current text of Article 1, paragraph (q) is 'the term 'guaranteeing association' shall mean an association approved by the Customs authorities of a Contracting Party to act as surety for persons using the TIR procedure'.

28. With the Russian Federation proposal it has been suggested that the 'Customs authorities' expression in this paragraph should be removed in order to synchronize the terminology both used in Article 1 paragraph (q) and in Article 6, paragraph 1. It is considered that the expressions in the present Convention do not cause any incompatibilities. Therefore, there might be no need for any amendment to the article.

Comments by Iran (Islamic Republic of)

28bis. According to the legislation of Iran (Islamic Republic of), customs is the only authority to select the national guaranteeing association. Therefore, deleting the words "the customs authorities" would not be in line with our national legislation.

(ii) **Article 3 (b), line 1**

For approved substitute authorized by the Contracting Parties (ECE/TRANS/WP.30/2014/17).

Comments by Belarus

29. The wording "approved" appears in Article 6, paragraph 2 of the TIR Convention and, therefore, in the opinion of GTK, there is no need to amend Article 3, paragraph (b), replacing "approved" by "authorized by the Contracting Parties". At the same time, it is proposed to study this proposal against the background of a complete review of the terminology used in the TIR Convention.

Comments by the EU and its member States

30. The EU agrees with this proposal. As stated above, the phrase 'the competent authorities' might be also included. In this regard, possible amendment of the words 'approved/approve' in Article 6, paragraph 2, as well as in Explanatory Note thereto, should also be taken into consideration.

Comments by Switzerland.

31. See also our comments to Article 1 (q). The Russian proposal does not seem to change the scope of this paragraph.

Comments by Turkey

32. The current text of Article 3, paragraph (b) is 'The transport operations must be guaranteed by associations approved in accordance with the provisions of Article 6 and must be performed under cover of a TIR carnet, which shall conform to the model reproduced in Annex 1 to this Convention'.

33. It is proposed that the term 'approved' in this article be amended to read 'authorized by the Contracting Parties'. The Turkish Customs Administration considers the proposal appropriate.

(iii) Annex 9, Part I, Article 3 (vii), line 2

For administration of the TIR procedure substitute application of the Convention (ECE/TRANS/WP.30/2014/17).

Comments by Belarus

34. GTK supports the proposed amendment.

Comments by the EU and its member States

35. The EU would wish further clarification of the purpose of this proposal as we think that verification of records and accounts is rather related to the administration of the TIR Convention.

Comments by Switzerland

36. No specific comments by Switzerland.

Comments by Turkey

37. The current text of Annex 9, Chapter 1, Article 3 (vii) is 'shall allow the competent authorities to verify all records and accounts kept relating to the administration of the TIR procedure'.

38. It is proposed that the term 'the administration of the TIR procedure' be revised to read 'the application of the Convention'. The Turkish Customs Administration considers the proposal duly appropriate, as it takes into account the real content and spirit of the provisions of the Convention.

(iv) Annex 9, Part I, paragraph 5, first sentence

After requirements insert or with the duties of the association as set forth in paragraph 3 (ECE/TRANS/WP.30/2014/17).

Comments by Belarus

39. GTK supports the proposed amendment.

Comments by the EU and its member States

40. The EU shares the Russian view that the duties of the associations described in Annex 9, Part 1, paragraph 3 should be duly respected. However, it is our understanding that the duties of the association as set out in paragraph 3 are already covered and, therefore, do not need for them to be specifically mentioned in paragraph 5.

Comments by Switzerland

41. No specific comments by Switzerland.

Comments by Turkey

42. The subtitle for the Annex 9 Chapter 1 is ‘Conditions and Requirements’. Annex 9, Chapter 1, Article 3 determines the duties of the guaranteeing association. The expression ‘non-compliance with these conditions and requirements’ referred in Article 5 already involves Article 3, therefore it is considered that there might be no need for any amendment in the article.

Comments by Iran (Islamic Republic of)

42bis. Iran (Islamic Republic of) supports this proposal.

(v) **Annex 9, Part I, paragraph 7, line 2**

For Contracting Parties substitute Contracting Party (ECE/TRANS/WP.30/2014/17).

Comments by the EU and its member States

43. The EU would be inclined to agree with this proposal, but would wish further explanation before taking our final position.

Comments by Switzerland

44. No specific comments by Switzerland.

Comments by Turkey

45. With the Russian Federation proposal, it has been suggested that the ‘Contracting Parties’ expression should be revised as ‘A Contracting Party’. However after serious considerations, it has been designated that the submitted proposal does not hold the qualification to change the content of the current article, therefore it is considered that the article should remain the same. Provided that the Russian Federation justifies the reason of the proposal, the Turkish Customs Administration will be ready to consider the proposal again.

Comments by Belarus

45bis. Belarus supports this proposal.

Comments by Iran (Islamic Republic of)

45ter. Further clarification is needed to examine the proposed wording in relation to Articles 6, 8 and 11 of the Convention.

Comments by the International Road Transport Union

46. IRU supports the proposals of the Russian Federation.

(d) **Annex 8, Article 9**

47. Expansion of the membership of the TIR Executive Board of the Convention and establishment of a rule whereby the Board should consist predominantly of experts from the Contracting Parties to the Convention that have the largest turnover under the TIR regime (ECE/TRANS/WP.30/2014/17).

Comments by Belarus

48. The Russian Federation proposes to enlarge the membership of TIRExB and establish a rule whereby the Board should consist predominantly of experts from those Contracting Parties that have the largest trade turnover under the TIR regime. In view of the fact that the question of enlargement of the membership of the TIRExB requires further assessment, GTK proposes to continue discussing this issue at future sessions of WP.30.

Comments by the EU and its member States

49. The role of TIRExB is best performed by gathering qualified and experienced experts, who, indeed, in the past have often come from those Contracting Parties where the TIR procedure is most widely used. In creating a direct link between the number of TIR Carnets and representation, the TIRExB may not be able to attract such persons. In addition a group of nine experts has proven to be a size that allows for efficient expert discussion. It is doubtful if there would be any benefit in terms of results from an enlarged group. Budgetary constraints should also not be forgotten.

Comments by Turkey

50. TIR Executive Board is established as a dynamic body for supervising and providing support in the application of the TIR procedure. That is why the procedure with respect to its mode of operation is of vital importance.

51. Indeed, multivocality is one of the vital features for international platforms to ensure that comprehensive assessments can be made and considerations can be put forward. Nonetheless, TIRExB is already a subsidiary body of AC.2 which has broad participation from the Contracting Parties. An act towards expanding the number of seats in the TIRExB might undermine the effectiveness and efficiency of the body.

52. As it is well known, every Contracting Party has the right to nominate a candidate for the TIRExB elections. As there is no geographical distinction, Contracting Parties which are interested in the TIR system, or which would like to provide an input to the application of the globally implemented TIR system, notify their experts to stand for the elections. Inclusion of the experts coming from a Contracting Party which uses the TIR system frequently would definitely enhance the quality of the discussions and decisions of the Board. However, the Turkish Customs Administration has doubts about increasing the number of the seats. After all, it might pose a risk to the dynamic structure which is ensured by its current size with nine members. The members of the TIRExB are elected by the representatives of the Contracting Parties, those who participate and present at the Administrative Committee, on a majority of votes basis. Therefore, the proposal regarding a change the structure of this dynamic body should be considered in a cautious manner.

Comments by the International Road Transport Union

53. IRU has always supported the calls from various TIR Contracting Parties to ensure appropriate representation of the major TIR Contracting Parties in the official bodies of the TIR Convention, in particular the TIR Executive Board.

54. This is a particularly important point, taking into account the role played by the Russian Federation within the TIR Convention, being currently the TIR country issuing the second highest number of TIR Carnets and the TIR country where the highest number of TIR Carnets are terminated.

55. In this respect, IRU supports the current activities of the informal group working on making possible adjustments to the composition of the TIRExB and the statement published on the occasion of the last AC.2 meeting in this respect.

Comments by Iran (Islamic Republic of)

55bis. The position of Iran (Islamic Republic of) with regard to the expansion of membership of TIRExB is well known (see Informal document WP.30/AC.2 No. 7 (2012)) and will remain unchanged. We encourage the TIR Administrative Committee to discuss this proposal in depth, in order to reach a consensus on geographical coverage in the interest of all Contracting Parties to the TIR Convention.

III. Various amendment proposals by the Russian Federation contained in document ECE/TRANS/WP.30/AC.2/2014/14 and comments thereto

(a) Article 1, paragraph (o), line 3

For on whose behalf substitute by whom

Comments by the International Road Transport Union

56. IRU supports proposals to review the existing terminology of the TIR Convention.

Comments by the EU and its member States

56bis. This proposal would exclude a possibility to appoint a representative for lodging a customs declaration. In practice, the authorized TIR Carnet holder is usually a (transport) company. Direct representation, in which case the customs representative shall act in the name of and on behalf of this (transport) company – TIR Carnet holder, should be allowed. Therefore, we conclude that the current wording of Article 1 (o) and Article 19 should be maintained (see also comment to Article 19).

Comments by Switzerland

56ter. In general, the proposal aims at achieving that TIR Carnet holders can no longer take on subcontractors to conduct TIR transports on their behalf. In addition, the proposal implies that the TIR Carnet holder, whose name appears in box 3 on page 1 of the cover of the TIR Carnet, performs the TIR transport himself. The question arises if, as such, the name of a company could still be indicated in box 3. Indeed, in case such company employs various drivers, it would be interesting to know who, in that case, would be the TIR Carnet holder. The company? One specific driver? Various drivers? As a point of information, reference is made to the ATA Carnet, as contained in Annex A of the Customs Convention on the ATA Carnet for the Temporary Admission of Goods (ATA Convention), which contains a box entitled “represented by”. Taking that into account, the question is why such possibility should not be created for the TIR Carnet.

Comments by Turkey

56quater. From the explanation provided by the Russian Federation, it is understood that non-authorized persons having access to the TIR procedure increases the risk of non-compliance with the customs law and causes harm to the budget of the Russian Federation. The current Turkish practice does not allow those who are not included in the system to use TIR Carnets. From this point of view, Turkey thinks that the existing form of the relevant text sufficiently serves the purpose of the Convention. Although much appreciative of the explanations provided by the Government of the Russian Federation, Turkey remains cautious with the proposal. If the Russian Federation could provide further explanations on the risk of non-compliance as a consequence of the application of the existing provisions of the Convention, the Turkish Customs Administration will be ready to consider the proposal again.

(b) Article 2, line 2–3

After more insert customs

Comments by the International Road Transport Union

57. IRU supports proposals to review the existing terminology of the TIR Convention.

Comments by the EU and its member States

57bis. The EU designated its customs territory as a single territory for the purpose of the rules governing the use of the TIR procedure. The fact that the EU forms one single market without internal borders excludes the possibility to use TIR Carnets for internal transports. The proposed amendment of Article 2 would not change the EU position. Therefore, we can agree.

Comments by Switzerland

57ter. The proposed amendment can be accepted.

Comments by Turkey

57quater. According to Turkish law, the customs and political frontiers of Turkey are the same. Since there is a customs office at every border crossing point in Turkey, using the terms "border crossing" or "customs border crossing" in any text does not make any difference in terms of their application. On the other hand, the issue could play in case several Contracting Parties have established a customs or an economic union. But even in that case, the question of customs or political frontiers should be settled by the customs legislation of the customs or economic union. Turkey recalls the discussions at the 139th session of WP.30 (ECE/TRANS/WP.30/278, para. 20) and thinks that, at this stage, such an amendment is not necessary.

(c) Article 8, paragraph 1, line 2

After amount insert and, if no such an amount has been set, the full amount

Comments by Switzerland

57quinques. The proposed amendment could lead to problems in the uniform application of the Convention. By way of example, in Switzerland, when goods are being imported under cover of a foreign TIR Carnet, which is not being discharged and where the goods have not been declared for importation to be put in free circulation, the Swiss customs administration proceeds with investigations to be able to identify the addressee. In case the addressee can be identified and in conformity with Article 11, paragraph 2 of the Convention, he will have to make an a posteriori declaration, pay the import duties and taxes, without excluding the possibility of a penal procedure. In case the addressee cannot be identified, the Swiss customs administration will claim payment from ASTAG, the Swiss national association. In that case, ASTAG will pay a maximum of 100,000 SwF, even if the amount of import taxes and duties exceeds that amount. This is in conformity with the insurance certificate that AXA Winterthur issues as part of the guaranteeing agreement between the Swiss customs administration and ASTAG. It is well known that the level of the guarantee coverage may vary from country to country. At the same time, Switzerland finds it hard to understand that a national guaranteeing association would accept that no guarantee limit be established. Consequently, the proposed amendment merits further considerations by the Working Party.

(d) Article 8, paragraph 3, line 1

For shall determine substitute shall be entitled to determine

Comments by the International Road Transport Union

58. These new amendment proposals are similar to those presented by the Russian Federation in document ECE/TRANS/WP.30/2014/17. In connection with the above proposals, IRU reiterates its support for the initiative of the Russian Federation to reopen the important question concerning the maximum amount guaranteed and reconfirms its readiness to re-examine the issue of the guarantee level.

Comments by the EU and its member States

58bis. This proposal concerns the possibility for a Contracting Party not to set a maximum level of guarantee per TIR carnet which may be claimed from the national guaranteeing association. The opinion of the EU has been already expressed in accordance with the Russian proposal No. 1 in document ECE/TRANS/WP.30/2014/17, where the same proposal is made to amend Annex 9, Part I, paragraph 3 (ii): “The EU is of the opinion that the current guarantee system allows for a flexible approach by Contracting Parties to decide on the level of the guarantee. The maximum level of guarantee per TIR Carnet is in the EU fixed at 60,000 Euros. However, as practice shows the system of TIR guarantees might not correspond to the needs of the customs authorities of some Contracting Parties (outside the EU) to protect their state revenues. In cases where the guarantee level is not sufficient, some Contracting Parties use customs escorts and others require additional guarantees, such as an additional voucher with a guarantee for 100,000 Euros introduced in the TIR+ project of the IRU. The EU is of the view that these practices cannot be regarded as an ideal solution. In the case of the TIR+ project it is not even provided for in the Convention. The issue of the use of additional guarantees as well as introduction of a more flexible application of the guarantees is one of the important topics currently discussed within the TIRExB. The EU proposes to submit the Russian proposal to TIRExB and add it to its current discussions, so that it can lead to a proposal which is sufficiently prepared for submission to AC.2. Nevertheless, the EU is willing to discuss further this proposal as well as a possible TIRExB proposal. In that context one should also consider that in order to introduce any change to the guarantee system, other provisions of the TIR Convention, such as Article 8, should be taken into account.”

Comments by Switzerland

58ter. With reference to the French text, there does not seem to be a difference between the existing text and the proposed amendment.

Comments by Turkey

58quater. Turkey has already shared its views on the issue in reply to the proposals contained in ECE/TRANS/WP.30/2014/17 (see paras. 5–9 of this document). In addition, AC.2 decided to mandate TIRExB to consider the proposal to amend Annex 9, Part I, paragraph 3(ii) which is relevant for Article 8, paragraph 3 of the Convention (ECE/TRANS/WP.30/AC.2/123, para. 24).

(e) Article 11, paragraph 3, lines 2–3

For three months substitute one month

Comments by Switzerland

58quinques. The proposed amendment can be accepted.

Comments by Turkey

58sexies. The Turkish Customs Administration has attentively studied the proposals. Turkey supports every precautionary measure to avoid any weakness in collecting taxes and duties for the state. But all sorts of possibilities and situations should be considered.

The Russian proposals aim at decreasing the period for the guaranteeing association to pay the amounts claimed from three months to one month. This may, however, lead to other problems. In particular, in case discharge is established after this one month period, customs administrations would have to pay back the amounts levied. This would require additional administrative procedures and formalities and, consequently, create extra workload for the authorities. Therefore, as the one month period is too short, Turkey is not in favour of supporting this proposal.

(f) Article 11, paragraph 4

At the end of the paragraph insert a new phrase *reading*

“If the guaranteeing association does not pay the amount[s] claimed within that period, the competent authority[ies] shall be entitled to recover the amount[s] by direct debit from the bank account of the guaranteeing association, and from the liability coverage provided by the guaranteeing association to the satisfaction of the competent authorities[y] of the Contracting Party in which it is established.”

Comments by the EU and its member States

58septies. *According to the Explanatory note to Article 11, paragraph 4 in case the guaranteeing association fails to pay the amount claimed within the period of three months, the competent authorities shall rely on national regulations to require payment. These national provisions may foresee, as the Russian Federation suggests, recovering the amount through the courts. The EU would suggest discussing a possible revision of the Explanatory Note to Article 11, paragraph 4 and perhaps its transformation into a new paragraph 4 bis. The EU is also open to any further proposals which would change the duties of the guaranteeing associations set out in Annex 9, Part I, although according to paragraph 7 of this Annex, Contracting Parties may prescribe additional conditions and requirements to be fulfilled by the national guaranteeing association (and which should be contained in the written agreement).*

Comments by Switzerland

58octies. *The proposed amendment merits further considerations by the Working Party.*

Comments by Turkey

58nonies. *If the guaranteeing association fails to pay the sums within the three months (which would be contrary to provisions of the guarantee agreement), the competent authorities may rely on national regulations. Although recovering the amount by direct debit would meet the interests of customs administrations, it would also entail administrative formalities, additional processes and extra workload for the competent authorities in case of having to refund the amounts when having lost in court.*

(g) Article 11, new paragraph 4 bis

At the end of the amended paragraph 4 insert a new paragraph 4 bis *reading*

“If the guaranteeing association does not pay the amount[s] mentioned in Article 8, paragraphs 1 and 2, within the period of three months set in the Convention, the competent agencies[authority/authorities] may claim payment of such sums through the courts within a period established in agreement with the national guaranteeing association.”

Comments by the International Road Transport Union

59. The amendment proposals of Article 11 paragraph 3 and Article 11 paragraph 4 as well as the proposal for a new Article 11.4 bis are aimed at:

- reducing the deadline from three months to one month for sending the claim to the guaranteeing association (amendment proposal to Article 11 paragraph 3);
- introducing the possibility for competent authorities to exercise a direct and unconditional recovery from both the bank accounts of the association and the security provided by the guaranteeing association in the case that no payment is made by the latter, within the foreseen three months (amendment proposal to Article 11 paragraph 4);
- introducing the possibility for competent authorities to claim payment from the guaranteeing association through court proceedings within a period established in agreement with the national guaranteeing association (proposal for an additional new Article 11.4 bis).

60. IRU supports the initiative of the Russian Federation to review the procedure regarding the recovery of amounts due from the guaranteeing association in order to speed up payments to the benefit of the state budget. Therefore, the IRU is not opposed to the proposed amendments to the Article 11 paragraph 3, Article 11 paragraph 4 and proposal for the new Article 11.4 bis.

61. In any case, the details of such a recovery procedure can always be reflected in the national guarantee agreement, based on the provisions of national legislation in addition to the provisions of the TIR Convention.

Comments by the EU and its member States

61bis. We support the aim to minimize the risk of any losses for the budgets of the Contracting Parties. In our view, it is the guaranteeing association (subsequent to the person directly liable for such payment) against whom the claim for payment is to be made. It is not to be made against the insurance company, pool of insurers or a financial institution. As regards the proposal for amendment of Article 11, paragraph 3, according to Article 11 paragraph 2, the competent authorities shall require the payment from the person directly liable before making a claim against the national guaranteeing association. The reduction of the earliest point in time to send the claim for payment to the association by two months (from three to one month) would significantly reduce the period for settling the payment with the person directly liable. However, we could further discuss the possibility to amend the given period for cases where it is clear that the person directly liable cannot be identified. As regards the proposal for amendment of Article 11, paragraph 4, according to the Explanatory Note to Article 11, paragraph 4, in case that the guaranteeing association fails to pay the amount claimed within the period of three months, the competent authorities shall rely on national regulations to require payment. These national regulations may foresee, as the Russian Federation suggests, recovering the amount by direct debit from the bank account of the guaranteeing association or any other mean of recovery.

Comments by Switzerland

61ter. Switzerland understands the concerns of the Russian Federation. At the same time, the question arises whether the text of the proposed new paragraph 4 bis should really be included in the TIR Convention. Indeed, Switzerland is of the opinion that such clause could just as easily be included in the written agreement between the guaranteeing association and the competent authorities of the Contracting Party in which it is established (see Annex 9, Part I, paragraph 1 (d)).

(h) Article 19, line 2

After produced insert by the TIR Carnet holder

Comments by the International Road Transport Union

62. IRU supports proposals to review the existing terminology of the TIR Convention.

Comments by the EU and its member States

62bis. The same [as for Article 1 (o)] applies for the production of the goods and vehicle at the customs office of departure. The adoption of this proposal, particularly as regards Article 19, would be contradictory to the concept of “subcontractors”, which is used in practice in TIR procedure. A document ECE/TRANS/WP.30/AC.2/2012/13, containing proposal by the secretariat of a comment to Art. 1 (o) concerning the use of a TIR Carnet by other persons than the TIR Carnet holder relates to this issue – and is currently under discussions. Therefore, we conclude that the current wording of Article 1 (o) and Article 19 should be maintained (See also comment to Article 1 (o)).

Comments by Switzerland

62ter. See our comments to Article 1 (o).

Comments by Turkey

62quater. With reference to the same explanations for Article 1, paragraph (o), Turkey needs further explanations and justifications to analyse this necessity to amend the Convention.

(j) Article 19, second phrase

For the existing text substitute

“The Customs authorities of the country of departure shall verify that the particulars in the goods manifest tally with those in the transport or other commercial documents and in the export documents drawn up by the Customs authorities relating to the goods, and shall inspect the goods and affix Customs seals.”

Comments by Switzerland

62quater. The proposed amendment can be accepted.

Comments by Turkey

62quinques. Turkey believes that Contracting Parties who perform actions as required by national legislation have the right to inspect the goods when they deem necessary. In view of the fact that provisions of national legislation provide customs authorities with the mandate to check and verify a wide range of particulars, there might be no need for a new amendment.

(k) (Annex 6) Explanatory Note 0.19, first phrase

Delete first phrase

Comments by the EU and its member States

62quinquies. The EU would like to ask for further clarification. Certain discretion should be kept for customs authorities. It may not be in all cases necessary to produce export documents drawn up by the customs authorities when presenting the goods, the road vehicle, the combination of vehicles or the container and the TIR Carnet at the customs office of departure. The accuracy of the goods manifest can be checked in different manners by producing different documents. The EU does not support any approach leading to an increase of the level of physical checks. A preferable solution should be based on performance of a customs risk management system. Therefore, we take tentatively the view that it is sufficient to keep the current Explanatory Note to Article 19.

Comments by Switzerland

62sexies. The proposed amendment can be accepted.

(l) Article 21, line 2

After produced insert by the TIR Carnet holder

Comments by the International Road Transport Union

63. IRU supports proposals to review the existing terminology of the TIR Convention.

Comments by the EU and its member States

63bis. See our comments to Article 1 (o) and Article 19.

Comments by Switzerland

63ter. The proposal to add “by the TIR Carnet holder” can be accepted on the condition that the proposed amendments to Article 1 (o) and Article 19, line two, are equally accepted.

(m) Article 21, last line

For relating thereto substitute listing all the contents of the load

Comments by Switzerland

63ter. With reference to the rules regarding the use of the TIR Carnet, and in particular Rule 10, as well as to Explanatory Note 1.10 (c), Switzerland does not understand why the Russian authorities would wish to introduce the words “listing all the contents of the load” at the end of Article 21.

Comments by Turkey

63quater. With reference to the same explanations for Article 1, paragraph (o) and Article 19, Turkey needs extra clarifications from the Russian Federation with regard to this requirement.

(n) Article 38, paragraph 1, line 3

After serious insert or repeated

Comments by Switzerland

63quinques. The proposed amendment can be accepted.

(p) Article 38, paragraph 1

At the end of the paragraph insert a new phrase reading

“The conditions in which the offence against the Customs laws or regulations is considered to be serious shall be decided by the Contracting Party.”

Comments by the International Road Transport Union

64. IRU supports proposals to review the existing terminology of the TIR Convention.

Comments by the EU and its member States

64bis. A decision to exclude a holder from the TIR system is a serious matter and must be duly justified. The EU supports improving the current text of Article 38 not only as regards the consideration of serious or repeated offences, but also as regards the definition of the permanent or temporary basis for the exclusion. However, we think that adding an

Explanatory Note or a comment could be sufficient. We can agree with the proposal to add the words 'or repeated' into Article 38, paragraph 1 subject to some interpretative guidance on the practical application.

Comments by Switzerland

64ter. The proposal to amend Article 38 with a new phrase seems to be acceptable. At the same time, Switzerland is of the opinion that the criteria to define the degree of seriousness of an offence against the Customs laws or regulations should be more or less the same or similar for all Contracting Parties. Indeed, if that would not be the case, there would be unequal treatment of TIR Carnet holders by competent authorities. For that reason, Switzerland believes that the proposal merits further considerations by the Working Party.

Comments by Turkey

64quater. Turkey thinks that the phrase 'serious offence' which is already in the existing text of Article 38 also covers any 'repeated offence'. Because each Contracting Party has the right to take measures in case of non-compliance, as stipulated by the Convention, and assess which violations it deems serious, there might be no need to amend Article 38.

(q) Annex 9, Part I, paragraph 3 (v), line 3

After institution insert ,in accordance with the procedure laid down in the national requirements of the Contracting Party

Comments by the International Road Transport Union

65. The proposals of the Russian Federation are aimed at bringing the requirements concerning the liability coverage of the guaranteeing association in line with procedures determined by the national regulations of the Contracting Parties to the TIR Convention.

66. IRU, in principle, supports such an approach. Furthermore, the current wording of Annex 9, Part 1, paragraph 3 (v) of the TIR Convention already allows flexibility for the competent authorities and guaranteeing associations to make a choice as to the way the national guaranteeing association covers its liabilities in line with both the TIR Convention and national legislation. Therefore, the IRU believes that no amendments to Annex 9, Part I, paragraph 3 (v) are required at this stage.

Comments by the EU and its member States

66bis. We think that the wording 'to the satisfaction of the competent authorities of the Contracting Party in which it is established' already covers the fact that the insurance or financial guarantee contract is in line with the national requirements of the Contracting Party in which the association is established. The second paragraph of this paragraph 3(v) should also be maintained. Nevertheless, the EU is willing to discuss further this proposal.

Comments by Switzerland

66ter. The proposed amendment can be accepted

Comments by Turkey

66quater. The current text of the this provision contains the wording "to the satisfaction of the competent authorities of the Contracting Party". Turkey is of the view that this wording should meet the national requirements of any Contracting Party. Nonetheless, further clarifications from the Russian Federation in relation to the practical purpose of this proposal would be appreciated.