



# Economic and Social Council

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## Economic Commission for Europe

### Administrative Committee for the TIR Convention, 1975

#### Sixty-fourth session

Geneva, 12–13 October 2016

Item 5 (e) of the provisional agenda

#### Revision of the Convention

#### Proposals transmitted by the government of the Russian Federation

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#### Note by the secretariat

## I. Background and mandate

1. At its previous session, the Committee continued its considerations on the proposal to amend Article 11 with a new paragraph 4 bis, stipulating that claims for payment could be sought through court proceedings within deadlines prescribed in the national guarantee agreement. In the course of discussions, the Committee noted various other similar proposals such as amending Explanatory Note 0.11.4 or by converting the Explanatory Note into a new paragraph 4 bis. As the Committee could not reach a decision on the amendment proposal, it requested the secretariat to prepare a document, based on the views expressed during the discussion, as a basis for further consideration at the next session. In line with this request, the secretariat has prepared the present document.

## II. The original proposal for a new paragraph (4 bis) to Article 11

2. The proposal under discussion was submitted as part of a package, by the delegation of the Russian Federation, to the Committee at its fifty-ninth session (October 2014). The text of the proposal as contained in document ECE/TRANS/WP.30/AC.2/2014/14 is reproduced below for ease of reference:

Article 11

*After paragraph 4 insert a new paragraph 4 bis to read:*

4 bis If the guaranteeing association does not pay the amount mentioned in Article 8 (1) and (2), within the period of 3 months set in the Convention, the competent agencies may claim payment of such sums through the courts within a period established in agreement with the national guaranteeing association.

3. At the previous session of the Committee, the delegation of the Russian Federation provided further clarifications on the rationale of this proposal, namely that, it had transpired in national legal proceedings that the lack of specification of a concrete time frame during which the customs authorities could resort to the national judicial system had in some cases resulted in diverging interpretation of the provisions.

4. At the previous session, the secretariat had recommended to change the word “agencies” in this proposal, as it does not appear in other provisions. Therefore, for reasons of consistency, the secretariat would propose to replace the word “agencies” with “the customs authorities or other competent authorities” which would be in line with the terms used in other articles.

### **III. Proposal to convert Explanatory Note 0.11.4 into a new paragraph 4 bis**

5. The Explanatory Note to Article 11, paragraph 4, reproduced below for ease of reference, stipulates that if the deadlines for payment as laid down in the Convention are not met by the guaranteeing association, then the competent authorities may resort to procedures under national law to require payment. National law may provide for any number of actions, such as, but not limited to, court proceedings.

#### “Explanatory Note to Article 11, paragraph 4

0.11.4 If a guaranteeing association is asked, in accordance with the procedure set out in this article, to pay the sums referred to in Article 8, paragraphs 1 and 2, and fails to do so within the time-limit of three months prescribed by the Convention, the competent authorities may rely on national regulations in requiring payment of the sums in question because what is involved in such cases is a failure to carry out a contract of guarantee entered into by the guaranteeing association under national law. The time limit also applies in the event that the guaranteeing association, on receipt of the claim, consults the international organization referred to in Article 6, paragraph 2 over its position concerning the claim”.

6. The guarantee agreement between customs and the guaranteeing association is, as mentioned in the Explanatory Note, a contract governed by the national laws of each country, particularly those laws concerning contracts between governmental authorities (public sector) and a non-governmental entity.

7. In practice, the existing Explanatory Note provides the freedom to Contracting Parties to rely on national legislation to deal with any complications arising from claims for payment. Furthermore, it should be noted that Annex 9, Part I of the TIR Convention stipulates that a written agreement should be concluded between customs and associations, and that the agreement should include certain elements. However, the agreement may include additional elements that may be required by customs or may be obligatory under national laws and there is nothing in the Convention that would preclude the inclusion of anything additional. This is also confirmed in the text of Annex 9, Part I, paragraph 7.

8. As a result, it would appear that the existing text of Article 11, together with the Explanatory Note 0.11.4 and Annex 9, Part I, paragraph 7, provide the necessary flexibility to Contracting Parties to act within the national legal framework. The legal force of the text

will remain the same whether the text remains an Explanatory Note or is converted into a new paragraph in the text of Article 11.

9. Therefore, the Committee could decide to either keep the Explanatory Note or to convert it into new paragraph 4 bis.

#### **IV. Proposal to amend Explanatory Note 0.11.4**

10. Another proposal that was put forward at the previous session was to maintain the Explanatory Note, but to amend it to include a reference to the elements of the proposal by the Russian Federation. In this case, the secretariat would propose the following text (deletions are marked in ~~strike through~~ and new text is in ***bold italics***):

*Amend the Explanatory Note to Article 11, paragraph 4 to read:*

0.11.4 If a guaranteeing association is asked, in accordance with the procedure set out in this article, to pay the sums referred to in Article 8, paragraphs 1 and 2, and fails to do so within the time-limit of three months prescribed by the Convention, the competent authorities may rely on national regulations ***or, in the absence thereof, on any particular terms specified in the guarantee agreement in line with Annex 9, Part I, paragraph 7,*** in requiring payment of the sums in question because what is involved in such cases is a failure to carry out a contract of guarantee entered into by the guaranteeing association under national law. The time limit also applies in the event that the guaranteeing association, on receipt of the claim, consults the international organization referred to in Article 6, paragraph 2 over its position concerning the claim.

#### **V. Alternative proposal to convert the amended Explanatory Note 0.11.4 into a new paragraph 4 bis**

11. Finally, the amended E.N. 0.11.4, as proposed above could, also, be converted into a new Article 11, paragraph 4 bis.

#### **VI. Considerations by the Committee**

12. The Committee is invited to consider the different variations of the amendment proposal above and to select the most suitable amendment proposal.

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