



Economic Commission for Europe**Administrative Committee for the International Convention
on the Harmonization of Frontier Controls of Goods, 1982****Eleventh session**

Geneva, 13 June 2019

Item 4 of the provisional agenda

Proposals for amendments of the Convention**Proposals for a new Annex 10 on seaports****Note by the secretariat****I. Background**

1. At its seventy-second session (February 2010), the Inland Transport Committee (ITC) approved the report of the Group of Experts on Hinterland Connections of Seaports (ECE/TRANS/210), and invited its working parties responsible for the tasks mentioned therein (Road Transport (SC.1), Rail Transport (SC.2), Transport Statistics (WP.6), Intermodal Transport and Logistics (WP.24) and Customs Questions affecting Transport (WP.30)) to consider whether and how these tasks could be implemented (ECE/TRANS/208, paras. 30–32). The below excerpts reflect the considerations by WP.30 of the topic between 2010 and 2017.

II. Considerations by the Working Party

2. At its 126th session (October 2010), the Working Party was informed that ITC, at its February 2010 session, approved the report on hinterland connections of seaports (ECE/TRANS/210) and invited various working parties, including WP.30, to consider whether and how the tasks outlined in the report could be implemented (ECE/TRANS/208, paras. 30–32). The Working Party noted that the following recommendations fall within its competence: (i) to continue adopting good practices for border crossings; (ii) to consider the possible preparation of a new annex to the Harmonization Convention on border crossing procedures at seaports. WP.30 decided to consider these issues in detail at the next session (ECE/TRANS/WP.30/252, para. 5).

3. At its 127th session (February 2011), the Working Party noted that ports are crucial nodal points for modern supply chains where various modes of transport are brought together and that the scope of the Harmonization Convention encompasses all modes of transport, including maritime and inland waterways. At the same time, the Working Party noted that ITC and its subsidiary bodies, including WP.30, deal with inland transport and might not have the necessary expertise in maritime transport. For this reason, the Working Party felt that, before taking any decision on the preparation of a new Annex, extensive



consultations with other competent international organizations, both public and private, should be undertaken, such as the European Sea Ports Organization (ESPO), International Harbour Organization (IHO), International Maritime Organization (IMO), International Road Transport Union (IRU), International Union of railways (UIC), Community of European Railway and Infrastructure Companies (CER), Committee of the Organization for Cooperation between Railways (OSJD), Intergovernmental Organization for International Carriage by Rail (OTIF), International Union of combined Road-Rail transport companies (UIRR), World Customs Organization (WCO), European Commission, Working Party on Inland Water Transport (SC.3), Working Party on Intermodal Transport and Logistics (WP.24) and national experts. The secretariat was requested to contact these organizations with a view to soliciting their views and possible organization of a consultative meeting (ECE/TRANS/WP.30/254, para. 16).

4. At its 128th session (June 2011), the Working Party noted that the secretariat would soon transmit to various competent international organizations a letter soliciting their views on the possible preparation of a new annex to the Harmonization Convention on border crossing procedures at seaports (ECE/TRANS/WP.30/256, para. 15).

5. At its 129th session (October 2011), the Working Party was informed that, in July 2011, the secretariat transmitted to various international organizations a standard letter (Informal document No. 7 (2011)) soliciting their views on the possible preparation of a new Annex to the Harmonization Convention on border crossing procedures at seaports. So far, the following stakeholders have responded: IMO, IRU, UIC, OSJD, OTIF, WCO and the European Commission. A majority of respondents indicated that they generally advocate the idea of preparing a new Annex on border procedures at seaports, while pointing out that their participation in this activity could only be limited, due to lack of resources and, for some, expertise in the field. The secretariat felt that the industry concerned should become a driving force for drafting a new Annex, as it had been the case for Annexes 8 and 9 to the Convention. WP.30 suggested that port authorities at big seaports be contacted for that purpose (ECE/TRANS/WP.30/258, para. 11).

6. At its 130th session (February 2012), the Working Party was informed about activities of the secretariat with a view to identifying experts in this area who could assist in drafting such an annex as well to raising funds to hire a consultant(s) (ECE/TRANS/WP.30/260, para. 19).

7. At its 131st session (June 2012), the Working Party invited participants to assist the secretariat in identifying experts who could contribute to drafting a new Annex to the Harmonization Convention on border crossing procedures at seaports (ECE/TRANS/WP.30/262, para. 19).

8. At the tenth session of the Administrative Committee for the International Convention on the Harmonization of Frontier Controls of Goods, 1982 (AC.3) (October 2014), the secretariat recalled that in 2011, a report "Hinterland Connection of Seaports" (ECE/TRANS/210) had been published by the secretariat. This led to consultations with international organizations and the private sector, which showed a general interest for preparing a new annex 10 on border crossings at seaports. During the debate, the delegations were in favour in continuing these consultations and they stressed the need to involve adequate expertise and, in this context, the importance of involving major seaports in such activity. 14. The Administrative Committee noted the interest of some countries in this area and requested the secretariat to contact administrations of major seaports and associations and identify their interest in participating in such a project (ECE/TRANS/WP.30/AC.3/20, paras. 12–14).

9. At 141st session of the Working Party (October 2015), the secretariat presented the first draft of Annex 10, contained in document ECE/TRANS/WP.30/2015/21. The Working Party was informed that the draft had also been sent for comments to IMO, to business associations in countries of the Commonwealth of Independent States (CIS) and in Europe, such as the European Sea Ports Organization (ESPO), the International Port Community Systems Association (IPCSA), the Federation of National Associations of Ship Brokers and Agents (FONASBA), the International Association of Port and Harbours (IAPH) and the Federation of Terminal Operators (FEPORT). Business supported the idea of preparing a

new legal instrument which should improve the efficiency of sea ports and the cooperation between public regulatory agencies, port authorities and business operators. The Working Party was informed that various comments proposed to insert a reference in Annex 10 of the Convention on Facilitation of International Maritime Traffic, 1965 (FAL-65) and its relevant provisions, and to include in the text a reporting mechanism (see comments in informal document WP.30 (2015) No. 13). The Working Party took note of the proposals and requested delegations to inform their national agencies, port authorities and business operators about the project, and to invite them to submit their comments and views by 16 November 2015 at the latest to the secretariat, for revision of the draft for the next session (ECE/TRANS/WP.30/282, paras. 30–32).

10. At its 142nd session (February 2016), the Working Party discussed comments received for its consideration (see document ECE/TRANS/WP.30/2015/21/Rev.1) which included: (a) detailed changes to the text from the Eurasian Economic Commission (EEC); (b) comments on the text from Ukraine; and (c) a general proposal on referencing the IMO FAL-65 Convention from FONASBA. EEC further pointed out that the new Annex 10, in certain cases, stipulates commitments that go beyond the scope of the Convention itself and, therefore, proposed a review of the text of the Harmonization Convention to increase coherence between the body of the Convention and its Annexes (see also ECE/TRANS/WP.30/2015/21/Rev.1, Annex 3). The Working Party: (a) took note of these comments and considerations; (b) decided to continue working on Annex 10; and (c) and requested delegations to submit views on the changes and corrections proposed by EEC and Ukraine or any additional comments on the text in writing to the secretariat not later than by 10 March 2016 (ECE/TRANS/WP.30/284, paras. 35 and 36).

11. At its 143rd session (June 2016), the Working Party took note of Informal document WP.30 (2016) No. 5 by IMO which outlines its responsibilities for the facilitation of international maritime transport. The Working Party also took note of Informal document WP.30 (2016) No. 10 by the European Commission, containing comments by the European Union and its member States on the draft Annex 10. The comments made clear that an in-depth review of the Annex itself as well as a correlation with the Convention, in general, were warranted. In order to streamline its activities under this agenda item, the Working Party agreed to revisit document ECE/TRANS/WP.30/2015/21, with the original draft text, and to put, for now, document ECE/TRANS/WP.30/2015/Rev.1 with the various changes and comments by Ukraine, EEC and FONASBA aside. The delegation of the European Union expressed its general concern with regard to the necessity and purpose of developing an Annex dedicated to seaports, as customs procedures only account for a minor part of the wide range of controls and procedures that take place in ports. It further pointed out that there are various inconsistencies in the text of the draft itself as well as in relation to the body of the Convention. Considering that various articles in Annexes 8, 9 and 10 are fully identical, it raised the question whether it would not be appropriate to incorporate such identical provisions in the body of the Convention. In reply to a proposal by the delegation of Azerbaijan to either include a generic reference to the IMO FAL-65 Convention or some of its provisions, the secretariat explained that, from a legal perspective, this could lead to complications whenever either the IMO FAL-65 Convention or the Harmonization Convention would be amended. In addition, it seems that the text of the IMO FAL-65 Convention is not freely available, which would complicate the understanding and application of the Harmonization Convention for customs authorities. The Working Party welcomed a proposal from Azerbaijan to amend the text of Article 2, paragraph 1 to read “The Contracting Parties shall grant permission to come ashore for vessel crew members engaged in international long-haul and cabotage freight in accordance with national and, where applicable, international agreements, which provide for recognition of documents of vessel crew members, including seafarers identity document” and requested the secretariat to take this proposal on board in its further preparations. The Working Party took note of further comments by various delegations, in addition to the written comments received prior to the current session and requested the secretariat to review them all and use them as basis to prepare a new draft in the three official languages, for consideration of the Working Party at its next session. In view of the plethora of procedures at seaports, the secretariat was also requested, to particularly address the issue of single-window when preparing the updated draft. On that basis, the Working Party would then decide if the draft was

sufficiently developed to start consultations with other stakeholders. At the same time, all Contracting Parties to the Harmonization Convention were urged to engage in national consultations and be ready, at the next session of the Working Party, to provide a well-balanced position whether or not to continue this activity (ECE/TRANS/WP.30/286, paras. 45–49).

12. At its 144th session (October 2016), the Working Party considered document ECE/TRANS/WP.30/2016/16. The delegation of Ukraine underlined, once more, the relevance of this new draft for the customs and border controls of transports at seaports and referred back to the report of experts on hinterland connections from 2008 (see also ECE/TRANS/210), which had led ITC to request the Working Party to develop a specific Annex for inclusion in the Harmonization Convention. The Chair of AC.3 supported this position. The delegations of the Russian Federation and of European Union, on the other hand, challenged the legal and practical merits of the draft, in its current state as well as in general, with particular reference to the IMO-FAL 65 Convention which already covers some of the issues of controls at seaports. Recapitulating the discussion and recalling the great efforts that had been made to establishing consensus on the necessity and the text of draft Annex 10, the Chair of the Working Party stated that there seemed to be, as yet, insufficient support to continue this activity. The delegations of Azerbaijan and Ukraine expressed that they could not agree with this assessment and requested that the issue be further discussed at the next session. In conclusion, the Working Party decided to revisit document ECE/TRANS/WP.30/2016/16 at its next session. In order to have sufficient input for discussions, all delegations, that had not yet done so, were invited to submit written comments or considerations to the secretariat not later than by 15 November 2016. In the absence thereof, further discussions seemed not be of any use. At the request of the delegation of Azerbaijan, the secretariat was requested to review the relevance of the IMO-FAL 65 Convention in the context of the current discussions. Finally, at the request of the delegation of Ukraine, the secretariat was requested to revisit the letter by Ms. Molnar of 2010, addressed at stakeholders, to seek their support for the initiative to start considering a new Annex 10 on seaports and their replies as well as to reproduce excerpts from a speech by Ms. Molnar at the 2016 International Transport Forum on the issue (ECE/TRANS/WP.30/288, para. 31).

13. At its 145th session (February 2017), the Working Party revisited document ECE/TRANS/WP.30/2016/16, in conjunction with document ECE/TRANS/WP.30/2017/5. It took note that, further to a request for comments or considerations by delegations, the secretariat had received a letter from the State Customs Committee of the Republic of Azerbaijan, as contained in Informal document WP.30 (2017) No. 1. The secretariat had also received a contribution from the Government of Turkey (Informal document WP.30 (2017) No. 3, outlining its position on some of the provisions of the draft Annex. The delegation of Ukraine continued to advocate the relevance of the new draft, particularly for hinterland connections within the supply chain. Various other delegations stated that they questioned the added value of draft Annex 10, in particular in view of the existing IMO FAL-65 Convention and warned that its coming into existence could lead to legal confusion or, even, contradiction. They supported the preliminary conclusions by the secretariat in document ECE/TRANS/WP.30/2017/5, in particular with regard to the limited added value of the provisions of draft Annex 10 over the IMO FAL-65 Convention. In its current state, the draft contained in document ECE/TRANS/WP.30/2016/16, was viewed by various delegations to lack the consistency and clarity of structure to be considered as a workable draft. In conclusion, the Working Party gladly accepted the offer of the delegation of Ukraine to give, at the next session, a presentation, outlining the scope and the purpose of draft Annex 10, and developing on its relevance for the supply chain by providing a gap analysis for the current legislation in force. The Working Party further requested the secretariat to prepare a list of contracting parties to the Harmonization Convention and to the IMO FAL-65 Convention for comparison and to extend an invitation to IMO to attend future sessions (ECE/TRANS/WP.30/290, paras. 32 and 33).

14. At its 146th session (June 2017), the Working Party took note of a presentation by the delegation of Ukraine on the complex regulatory framework for customs procedures at ports that involved a multitude of actors. The Working Party further took note of document ECE/TRANS/WP.30/2017/12, containing a list of contracting parties to the Harmonization

Convention and to the IMO FAL-65 Convention. The WP.30 was informed that the secretariat had twice extended an invitation to the IMO secretariat to attend the session, but that so far, the invitation had remained without response. While thanking the delegation of Ukraine for the interesting and informative presentation, the delegations of Belgium, Germany and the Netherlands — which dispose of the biggest seaports in the EU — stated that having consulted with competent ministries in the field, serious doubts remained with regard to the utility and added value of developing a draft Annex to the Harmonization Convention on ports. The delegation of Italy supported this position, based on the lack of feedback from its national competent services. The delegation of the Russian Federation stated that, in its view, the draft seemed mainly of a declaratory nature and lacked legal force. It also doubted the added value of the draft Annex 10 as compared to the IMO FAL-65 Convention, considering that apart from Bosnia Herzegovina, Morocco and South Africa, all States which are contracting parties to the Harmonization Convention were also Contracting Party to the IMO FAL-65 Convention. Therefore, it did not see any benefit in further developing the draft. It further questioned the involvement of ECE in this field, as the issues at stake seemed to fall under the competence of IMO. Further to these interventions, the delegation of the European Union maintained its position of not accepting the draft in its current form as not bringing any added value for the European Union. The Working Party established that, while fully respecting the clear request from ITC and with due respect to all the efforts undertaken so far in preparing a suitable draft, the declaratory and repetitive nature of the text led to the conclusion that there was insufficient support among the participants of WP.30 to continue this exercise. Thus, the Working Party requested the secretariat to remove this item from its agenda and report accordingly to ITC at its 2018 session (see ECE/TRANS/2018/16, para.5). Finally, the Working Party requested the secretariat to convene, at the first opportunity, a session of the Administrative Committee of the Harmonization Convention (AC.3) to confirm its decision (ECE/TRANS/WP.30/292, paras. 39–41).

III. Considerations by the Committee

15. The Committee is invited to take note of this summary of activities to amend the Harmonization Convention with a new Annex 11 on seaports.
