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**Economic Commission for Europe****Inland Transport Committee****Working Party on Customs Questions affecting Transport****146th session**

Geneva, 13-16 June 2017

Item 5 of the provisional agenda

**International Convention to Facilitate the Crossing of Frontiers  
for Passengers and Baggage carried by Rail, of 10 January 1952****Convention on the facilitation of border crossing procedures  
for passengers, luggage and load-luggage carried in  
international traffic by rail****Note by the secretariat****I. Background and mandate**

1. At its 145th session, the Working Party requested the secretariat to prepare, for information at the current session, a short overview of the course of discussions on the new draft Convention (see ECE/TRANS/WP.30/290, para. 40).
2. To this end, the secretariat prepared this document, which should be read and understood in correlation with document ECE/TRANS/2014/15, prepared by the secretariat for the seventy-sixth session of the Inland Transport Committee (ITC) (February 2014) and containing a historic overview of discussions on amending the 1952 Convention versus drafting a new Convention from 2006 up to 2013.

**II. Historical review since 2014**

3. At its seventy-sixth session (February 2014), ITC was informed about the proposal made by the Russian Federation and supported by several other governments and national railways, for the development of a new convention on the facilitation of crossing of frontiers for passengers and baggage carried by rail. The Russian Federation presented a number of arguments in favour of drafting a new convention in this field, rather than accession to the outdated 1952 Convention. ECE/TRANS/2014/15 outlined and

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consolidated comments received on this issue. The Committee welcomed the setting up of an Informal Group of Experts to facilitate further work in this area; thanked the Committee of the Organization for Cooperation between Railways (OSJD) for offering to host the first meeting of the informal group in Poland; also thanked the Russian Federation for offering to host the second meeting of the informal group; requested that the informal group inform the Working Party on Customs Questions affecting Transport (WP.30) and the Working Party on Rail Transport (SC.2), who will inform the Committee at its next session on its progress (see ECE/TRANS/240, para. 56).

4. At its 137th session (June 2014), the Working Party recalled its previous discussions on a new convention to facilitate the crossing of frontiers for passengers and baggage carried by rail and that, at its 136th session, it had welcomed the establishment of an informal group of experts to work on elaborating such convention. The Working Party took note that OSJD had conducted a meeting in preparation of the possible drafting of a new convention, where the following countries had already tentatively agreed to participate in future work: Bulgaria, Lithuania, Poland, Russian Federation and Ukraine. At that meeting, it also agreed that the Russian Federation would prepare a first draft of such a convention by the end of June 2014, which would be shared with the United Nations Economic Commission for Europe (UNECE) for further dissemination. According to information received from the secretariat of the Intergovernmental Organization for International Carriage by Rail (OTIF), it is ready, in principle, to contribute to working on a new convention. A meeting to discuss this draft would be organized by OSJD in September 2014 in Poland. The Working Party took note of this information and requested interested delegations to communicate, in due course, to the secretariat the names of their experts who would like to participate in the work on a new convention (see ECE/TRANS/WP.30/274, para. 41).

5. At its 138th session (October 2014), the Working Party took note that, at the initiative of OSJD, an informal group of experts on elaborating such convention met for the first time on 8–9 September 2014 in Warsaw and representatives from twelve countries participated. The information, as provided by OSJD, on the outcome of this meeting, together with suggestions on the structure and contents of a new convention, is contained in Informal document WP.30 (2014) No. 12. In a first reaction, the representative of the European Union (EU) noted that it would be useful to have more information on the necessity to draft a new convention and its relation to the existing legal instruments as well as their current applicability. The Working Party took note of the information, requested delegations to inform their relevant railway agencies and operators about this project and invite them to join. The Working Party decided to monitor further developments in this area at its future sessions (see ECE/TRANS/WP.30/276, para. 42).

6. At its 139th session (February 2015), the Working Party took note of Informal document WP.30 (2015) No. 4 containing an update from OSJD on the work of an informal group of experts tasked to elaborate a draft. The joint meeting of the Plenipotentiary Representatives of Members of OSJD Ministerial Conference and of the Conference of General Directors of OSJD Railways (December 2014, Warsaw) decided that two meetings of the group of experts would be held in 2015. The first meeting (26 and 27 May 2015, Warsaw) is expected to reach agreement on the concept of the new convention which will enable refining its text. The Working Party recalled that a preliminary concept on the structure and purpose of the envisaged convention was presented at its previous session (Informal document WP.30 (2014) No. 12) (see ECE/TRANS/WP.30/278, para. 41).

7. At its seventy-seventh session (February 2015), ITC took note of the activities related to the development of a new Convention on the facilitation of border-crossing for international passenger railway operations; and recommended to the interested parties to continue the work on the formulation of a draft convention within the Informal Expert

Group on the Development of a New Convention on the Facilitation of Crossing of Frontiers for Passengers and Baggage Carried by Rail with an aim to review the results of such work in an appropriate manner, first in SC.2 and WP.30 and then at the Committee at its seventy-eighth session (see ECE/TRANS/248, para. 84).

8. At its 140th session (June 2015), the Working Party was informed that the informal group of experts established to elaborate a draft of a new Convention had met in Warsaw on 27 and 28 April 2015. The UNECE secretariat also participated in the meeting. The Working Party asked OSJD to submit a first conceptual draft of the new Convention to the secretariat by 20 August 2015, so that the Working Party could consider it at its October 2015 session. The delegate from the Russian Federation proposed that the draft of the new Convention should be submitted to the seventy-eight session of the ITC (February 2016). Further to questions about the nature and the scope of the new Convention, the representative of OSJD explained that the new Convention is not exclusively a customs convention but a comprehensive legal instrument that should accommodate all types of border controls related to the international movement of passengers and their baggage, which can be made by border control agencies, including border police (see ECE/TRANS/WP.30/280, paras. 44-45).

9. At its 141st session of the Working Party (October 2015), the representative of OSJD presented the major provisions of the draft convention as contained in document ECE/TRANS/WP.30/2015/22. The representative of the Russian Railways, speaking on behalf of the informal group, invited interested delegations to participate in the work of this informal group. A number of delegations (Azerbaijan, Belarus, Russian Federation, Switzerland and Ukraine) provided suggestions on how to improve the text of the draft. The representative of EU noted the importance of avoiding duplication with other existing legal instruments and proposed conducting a gap analysis between the 1952 Convention, the Kyoto Conventions, Annex 9 of the Harmonization Convention, the new draft convention as well as other relevant legal instruments. Several delegations supported this request. In conclusion, the Working Party (a) thanked and supported OSJD and the informal group for the work done; (b) invited delegations to submit their comments and views not later than by 16 November 2015 to the secretariat; (c) mandated the secretariat to prepare, in cooperation with OSJD, the informal group and interested delegations, a paper containing a comparative analysis of the new convention and other relevant legal instruments, in order to facilitate considerations of the draft text of the new convention at its next session (see ECE/TRANS/WP.30/282, paras. 35-38).

10. At its 142nd session of the Working Party (February 2016), the representative of OSJD stated that the new convention does not duplicate provisions of other major international legal instruments, as a comparative analysis, conducted at the request of the Working Party, had shown (see ECE/TRANS/WP.30/2016/6, Annex 1). He stated that the facilitation of railway passenger traffic is important for European and for Asian countries, and that OSJD closely cooperated with ESCAP in this area of work. He further informed the Working Party that the draft text of the new convention had been significantly revised after the October 2015 session of WP.30 and had been considered at the November 2015 session of the Working Party on Rail Transport (SC.2). The list of informal documents containing comments made before that session of SC.2 is available in document ECE/TRANS/WP.30/2016/6. SC.2 had positively evaluated the convention and requested it to be also analysed in the context of existing bilateral railway agreements (the analysis is available in document ECE/TRANS/WP.30/2016/6, Annex 2). A representative of the informal group mentioned that, as a result of the active discussions in WP.30 and SC.2, comments from various delegations had been received. However, with regard to the analysis of bilateral agreements, only the Russian Federation had submitted the requested information. He invited all other interested delegations to join the work on this new legal instrument which would have positive cross-regional implications. The Working Party took

note of a new revised draft of the convention in document ECE/TRANS/WP.30/2016/5. The delegations of Belarus, Kazakhstan and Ukraine expressed their support for the new convention. The secretariat pointed out the important work and the high quality of the draft by the informal group, as mandated by the Working Party. It also stressed the importance for delegations to hold internal consultations to take stock of the views of all major stakeholders and, at the same time and recalled the tight deadline for submitting official documents for the June session (10 March 2016) (see ECE/TRANS/WP.30/284, paras. 39-42).

11. At its seventy-eight session (February 2016), ITC welcomed the progress of the informal Group of Experts on a new convention concerning the facilitation of crossing of frontiers for passengers and baggage carried by rail and thanked the Group for its work. The Committee invited WP.30 and SC.2 to organize an ad hoc meeting in 2016 in cooperation with all interested ITC participants and relevant stakeholders in order to finalize the draft of the Convention and consider the development of a compendium of guiding good practices (using the format of work that was used for the elaboration of Annex 9 to the Harmonization Convention) for future adoption by the Committee and opening for signature by interested countries and to report to the ITC session of 2017 on the progress achieved (see ECE/TRANS/254, para. 95).

12. At its 143rd session (June 2016), the Working Party referred to Informal document WP.30 (2016) No. 10 by the European Commission, which also contained comments by the EU and its member States on the draft new Convention. In addition, the Working Party took note of Informal document WP.30 (2016) No. 11 with comments from the State Customs Committee of Belarus on Chapter 4 of the draft text. In addition, the Working Party took note that the informal group of experts, which had prepared the original draft and which would conduct its next session on 12 and 13 July 2016, would also review all raised comments and, in parallel, prepare a revised draft. The Working Party requested that the revised draft by the secretariat be available on time, so that the informal group could take it into due account at its July 2016 session. The Working Party further took note that, at its seventy-eighth session, ITC, inter alia, had invited WP.30 and the Working Party on Rail Transport (SC.2) to organize an ad hoc meeting in 2016 in cooperation with all interested ITC participants and relevant stakeholders in order to finalize the draft of the Convention and, eventually consider the development of a compendium of good practices for future adoption by ITC and opening for signature by interested countries and to report to the ITC session of 2017 on the progress achieved (see also ECE/TRANS/254, para. 95). In this context, the Working Party took note of a letter by the Russian Railways in support of this ITC decision. However, the Working Party considered that its internal discussions were not yet developed to an extent that would warrant the organization of such joint ad hoc session with SC.2. The Working Party delegated the Chair or the secretariat to report progress on this issue to SC.2 at its 2016 annual session and to ITC at its 2017 session. At the same time, the Working Party agreed that it would revert to the organization of an ad hoc meeting at a future session depending on the progress made in drafting the new Convention (see ECE/TRANS/WP.30/286, paras. 50-54).

13. At its 144rd session (October 2016), the Working Party was informed that the informal group of experts had conducted another session on 26 and 27 July 2016, where it had reviewed all raised comments and, in parallel, prepared the outlines of a revised draft. The Working Party took note of the amendments to the text as constituting a substantial effort towards creating a fully fledged international legal instrument to cover the addressed issues. The delegations of Belarus, Russian Federation and Ukraine reconfirmed their support for the proposed draft, reiterating the relevance of its speedy finalization for the sake of the international transport of passengers and luggage. Finally, the Working Party acknowledged that the finalized draft will require reviewing by the United Nations Office of Legal Affairs in order to establish whether or not the Secretary-General of the United

Nations could act as its depositary. The Working Party recalled that, at its seventy-eighth session, ITC, inter alia, had invited WP.30 and SC.2 to organize an ad hoc meeting in 2016 in cooperation with all interested ITC participants and relevant stakeholders to finalize the draft of the Convention and, eventually consider the development of a compendium of good practices for future adoption by ITC and opening for signature by interested countries and to report to the ITC session of 2017 on the progress achieved (see also ECE/TRANS/254, para. 95). However, the Working Party, at its 143rd session, considered that its internal discussions were not yet developed to an extent that warranted the organization of such joint ad hoc session with SC.2. The Working Party delegated the Chair or the secretariat to report progress on this issue to SC.2 at its 2016 annual session and to ITC at its 2017 session. At the same time, the Working Party agreed that it would revert to the organization of an ad hoc meeting at a future session depending on the progress made in drafting the new Convention (ECE/TRANS/WP.30/286, para. 54) (see ECE/TRANS/WP.30/288, paras. 32-37).

14. At the seventieth session of SC.2 (November 2016), the delegation of the Russian Federation reminded the secretariat of the urgent need to convene an ad hoc session of WP.30 and SC.2 in order to revise the draft convention, in line with the aforementioned invitation of ITC at its seventy-eighth session (February 2016). The delegations of Azerbaijan, Belarus and Kyrgyzstan supported this proposal. The representative of EU pointed out that the Commission sees some merit in the principle of a multilateral agreement which would apply at EU external borders and between third countries, and which would allow that the myriad of bilateral agreements could be replaced by one multilateral agreement. The Commission would like to verify the current (final) draft in order to ensure that comments submitted by DGs TAXUD and MOVE<sup>1</sup>, in respect of customs policy and security, have been fully taken into account. The Commission's belief is that customs comments were partly but not completely integrated while comments referring to police and immigration have mostly not been integrated yet. The Commission would need to ensure that an appropriate disconnection clause is introduced to clarify that between the EU members States only the EU acquis (and not the Convention would apply). Finally, the Commission needs to reserve its position until such time as it can verify with colleagues responsible for customs policy and border controls the implications for moving forward with this agreement. The Working Party agreed on the following road map for the finalization of the new Convention: (a) First substantial review of the draft by WP.30: February 2017; (b) Circulation of an amended draft by the secretariat to WP.30 and to the United Nations Office of Legal Affairs in New York: March 2017; (c) Finalization of the draft by WP.30: June 2017; (d) Circulation of the final text to WP.30 and SC.2: July 2017; (e) Adoption of the final text by WP.30: October 2017; (f) Adoption of the final text by SC.2: November 2017; (g) Endorsement of the final text by the ITC: February 2018. The Working Party encouraged interested Governments to further contribute to the discussions and finalization of the Convention (see ECE/TRANS/SC.2/226, paras. 29-35).

15. At its 145th session (February 2017), the Working Party took note that SC.2 met in November 2016 and that, as mandated by the Working Party, the secretariat had participated in the session. On that occasion, delegates of SC.2 and WP.30 had been given the opportunity to discuss the draft Convention (for information: only one delegate from WP.30 attended the session). SC.2 agreed with WP.30 that convening a dedicated ad hoc session to the draft text was premature. However, SC.2 agreed on what seemed to be the most feasible road map for further discussing the draft, which is: (a) a first substantial review of the draft by WP.30 in February 2017; (b) circulation of an amended draft by the secretariat to WP.30 and to the United Nations Office of Legal Affairs in New York in March 2017; (c) finalization of the draft by WP.30 in June 2017; (d) circulation of the final

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<sup>1</sup> Directorate-Generals of Taxation and Customs Union, and Mobility and Transport

text to WP.30 and SC.2 in July 2017; (e) adoption of the final text by WP.30 in October 2017; (f) adoption of the final text by SC.2 in November 2017; and (e) endorsement of the final text by the Inland Transport Committee in February 2018. At the same time, SC.2 acknowledged that such a schedule could only be maintained if governments would constructively contribute to further discussions and would unequivocally express their intention to accede to this new legal instrument once endorsed by ITC. In his intervention, the representative of the European Commission stated that, although the EU had contributed to the past discussions on this issue by providing provisional general and technical comment, the European Commission did not yet dispose of a mandate to enter into negotiations towards the conclusion of a new international legal instrument. In addition, the Working Party had not yet agreed with the, in his view, ambitious road map. He further explained the complex coordination required for the issue at hand, as it covers three major EU policy areas: railways, customs and the EU acquis on border management. So far, on none of the aforementioned areas had the EU identified any added value or benefits of the draft Convention. Several provisions even seemed to be incompatible with the EU acquis. Finally, in his view, the new Convention would not make bilateral agreements redundant, and perhaps not even facilitate them as the Convention does not contain a model for such agreements. He requested delegates to provide concise, convincing arguments on possible benefits. So far, the only function that the Convention could serve would be as a reference for bilateral agreements for a small number of countries. The representative of OSJD clarified, once more, the background and need for developing a new Convention, mainly because the existing 1952 Convention was outdated and did not fulfil modern railway requirements. The representative of OSJD noted the recent decrease of railway traffic of passengers and luggage from East to West and stressed that one of the reasons for this process is administrative barriers when crossing borders. The draft Convention is aimed at improving the situation. He further mentioned that, while this project is actuality for European States, at the same time it serves the specific interest of countries like China, Kazakhstan, Mongolia and other countries of Central Asia. The delegation of the Russian Federation supported the position of OSJD, stressing its relevance for the Eurasian continent as a whole. In its view, the draft Convention would serve as a base document for concluding multilateral and bilateral agreements. The representative of OTIF, in referring to the non-binding nature of many provisions of the new Convention, proposed to follow the soft law approach, where a resolution, recommendation or a code of conduct by ITC could guide interested countries to conclude a set of bi- or multilateral agreements to address pressing border crossing passenger and luggage issues. In reply to a proposal from the delegation of the Russian Federation and Ukraine, the Working Party agreed that it would continue its discussions at the next session on the basis of an amended draft, including the changes proposed in Informal document WP.30 (2017) No. 5. In addition, the secretariat was requested to extend an invitation to SC.2 participants to engage in the discussions and, to streamline the efficiency of participants, the secretariat was requested to indicate, in the draft agenda, a specific time frame, during which the issue would be discussed. Finally, the secretariat was requested to prepare a short overview of the course of discussions on the new draft, for the next session for information of the Working Party. Delegations were invited to submit any written contributions to the discussions not later than by 20 March 2017 to the secretariat. The delegation of EU indicated that they would need at least at least six weeks to reach a coordination position among EU Member States and would, therefore, not be able to meet this deadline. The Working Party mandated the secretariat to report its findings to ITC. Finally, The Working Party invited the informal group of experts to hold a consultation meeting with participation of representatives of interested states, regional organizations for economic integration and international organizations to review the wording of the draft Convention, in preparation of the 146th session of WP.30 (see ECE/TRANS/WP.30/290, paras. 35-40).

16. At its seventy-ninth session (February 2017), ITC was informed about work on railway transport in SC.2, i.e. developing an international rail security observatory, the action plan for implementing annex 9 to the Harmonization Convention, and the road map on finalizing the new convention on facilitating the crossing of frontiers for passengers and baggage carried by rail; On the road map, gave the following guidance: further to a substantial review of the draft by WP.30 at its 145th session (February 2017): (a) the secretariat, in March 2017, should circulate the amended draft to WP.30 and to the Treaty Section of the Office of Legal Affairs for further review; (b) WP.30 should finalize its comments on the draft by June 2017; (c) the secretariat should circulate the final text to WP.30 and SC.2 by July 2017; (d) so that WP.30 could adopt the final text at its 147th session (October 2017); (e) SC.2 could adopt the final text at its seventieth session in November 2017; and (g) the Committee could consider endorsing the final text at its eightieth session (February 2018) (see Informal document ITC (2017) No. 11, decision 36).

### **III. Considerations by the Working Party**

17. The Working Party is invited to take note of this historic overview when discussing how to pursue the issue of drafting a new Convention on the facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail.

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