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Working Party on Customs Questions affecting Transport

Ad hoc Expert Group on Phase III of the TIR Revision
(Fifth session, 10 and 11 November 2005, agenda item 3)

CONSIDERATIONS OF AMENDMENT PROPOSALS TO THE TIR CONVENTION*

Transmitted by the European Commission (EC)

A. BACKGROUND

1. At the fourth meeting of the Ad hoc group of experts on 3 October 2005, representatives were invited to submit proposals for the revision of Articles 8 and 11, and Annex 9 of the TIR Convention. The deadline for submitting these proposals was 18 October.

2. On behalf of the Commission services, below are the proposed amendments to these provisions. It is pointed out that these proposals incorporate, as much as possible, the amendment proposals that have already been tabled including, of course, the European Community's proposals set out in document TRANS/WP.30/2004/14. It should be pointed out that the proposals set out in TRANS/WP.30/2004/14 have been slightly modified in order to take into account the intervening developments and discussions concerning, in particular, the character of the TIR guarantee.

3. The Commission representatives will readily explain to the Ad hoc group the thinking behind these amendment proposals.

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B. PROPOSALS

Note: Only proposed amendments to the existing text are shown below.

Article 8

1. The guaranteeing association shall undertake to pay the import or export duties and taxes, together with any default interest, due under the Customs laws and regulations of the country in which an irregularity has been established in connection with a TIR operation. It shall be liable, jointly and severally with the persons from whom the sums mentioned above are due, for the payment of such sums.

7. *Deleted*

Article 11

- 1. Where a TIR operation has not been discharged the competent authorities shall:**
- (a) notify the holder of the TIR carnet in writing of the non discharge, as soon as possible; and**
 - (b) notify the guaranteeing association of the non discharge as soon as possible and not later than a period of one year from the date of acceptance of the TIR carnet by those authorities. In cases where the certificate of termination of the TIR operation was obtained in an improper or fraudulent manner the period for notification shall be two years.**

Explanatory Note to Article 11, paragraph 1

0.11-1 The notifications to the TIR Carnet holder and the guaranteeing association should be sent at the same time. The notifications should be sent by registered mail. With regard to the time limits for notifying the guaranteeing association, the use of registered mail shall establish proof of the date of receipt.

2. Where the payment of the sums mentioned in Article 8, paragraph 1 becomes due, the competent authorities shall, so far as possible, require payment from the person or persons directly liable for the payment of the sums before making a claim against the guaranteeing association.

Explanatory Note to Article 11, paragraph 2

0.11-2 The efforts to be made by the competent authorities to require payment from the person or persons directly liable shall include, at least, the transmission of the claim for payment to the TIR Carnet holder or the person(s) directly liable, if different. The claim should be transmitted by registered mail in order to establish proof of receipt. In addition the competent authorities should avail themselves of other measures that are available under national law to obtain the payment of the sums due.

Comment to Explanatory Note 0.11-2

Identification of person or persons directly liable

In the majority of cases it should be envisaged that the person directly liable for the payment of the sums due shall be the TIR Carnet holder. However, and without prejudice to national legislation, other parties may also be identified as being directly liable; these parties could include the person(s) who unlawfully removed the goods from the sealed compartment of the road vehicle or who participated in the removal.

3. Having complied with the requirements of paragraph 1 (a) and (b) and paragraph 2, the competent authorities shall have the right to claim payment of the sums mentioned in Article 8, paragraph 1 from the guaranteeing association.

4. The claim for payment of the sums referred to in Article 8, paragraph 1 shall be made to the guaranteeing association at the earliest three months after the date on which the association was notified that the operation had not been discharged or that the certificate of termination of the TIR operation had been obtained in an improper or fraudulent manner and at the latest not more than two years after that date. However, in cases which, during the above-mentioned period of two years, become the subject of legal proceedings, any claim for payment shall be made within one year of the date on which the decision of the court becomes enforceable.

Explanatory Note to Article 11, paragraph 4

0.11-4 In deciding whether or not to release the goods or vehicle, competent authorities should not, when they have other means in law of protecting the interests for which they are responsible, be influenced by the fact that the guaranteeing association is liable for the payment of duties, taxes and default interest payable by the holder of the Carnet.

Comment to Article 11, paragraph 4

Claim for payment of duties and taxes

Before making a claim against the guaranteeing association the competent authorities should make full use of the time scales offered under this paragraph in order to identify the person or persons directly liable.

The claim for payment should be supported by copies of the relevant documentation required to demonstrate the justification and validity of the claim. In cases where part of the goods has been subject to an irregularity, the competent authorities should apportion the claim for payment of the evaded duties and taxes referred to in Article 8, paragraph 1 accordingly.

Without prejudice to any national provisions concerning the right of appeal, should the guaranteeing association obtain alternative proof of the termination of the TIR operation it should refer that proof to the competent authorities who notified the non discharge of the TIR operation.

- 5. The guaranteeing association shall have a period of three months, from the date when a claim for payment is made upon it, in which to pay the amount claimed.**

Explanatory Note to Article 11, paragraph 5

0.11-5 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, paragraph 1, 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 three month time limit also applies in the event that the guaranteeing association, on receipt of the claim, consults the international organization referred to in Article 6.2 over its position concerning the claim. In cases where the guaranteeing association submits a reasoned appeal against the claim, the procedures laid down in national regulations shall apply.

- 6. The sums paid shall be reimbursed to the guaranteeing association if, within a two year period following the date on which the claim for payment was made, it has been established to the satisfaction of the competent authorities that no irregularity was committed in connection with the TIR operation in question.**

Explanatory Note to Article 11, paragraph 6

0.11-6 The reimbursement of the sums paid shall also be possible in cases where the person or persons directly liable subsequently pays the sums mentioned in Article 8 paragraph 1. The two-year time limit prescribed in Article 11 paragraph 6 may be extended in accordance with national legislation or administrative practice.

Annex 9

Part III

AUTHORIZATION OF AN INTERNATIONAL ORGANIZATION, AS REFERRED TO IN
ARTICLE 1 (r) FOR THE ORGANIZATION AND FUNCTIONING OF AN
INTERNATIONAL GUARANTEE SYSTEM AND TO PRINT AND DISTRIBUTE TIR
CARNETS

Conditions and requirements

1. The conditions and requirements to be complied with by the international organization authorized by the Administrative Committee to take on the responsibility for the organization and functioning of the international guarantee system and to centrally print and distribute TIR Carnets are:

- (a) Proven existence as an established organization representing the interests of the transport sector.
- (b) Proof of the sound financial standing of the international guarantee system.
- (c) Proven knowledge of its staff in the proper application of the TIR Convention.
- (d) Absence of serious or repeated offences against Customs or tax legislation.
- (e) Establishment of a written agreement [or any other legal instrument] between the organization and the Administrative Committee.

2. In order to be authorized by the Administrative Committee the international organization, in accordance with Article 6.2**bis**, accepts by signing the agreement referred to in paragraph 1 (e), to perform the following functions:

- (a) To provide the Contracting Parties of the TIR Convention via the national associations affiliated to the international organization with certified copies of the global guarantee contract and proof of guarantee coverage;
- (b) To provide the competent bodies of the TIR Convention with information on the rules and procedures set out for the issue of TIR Carnets by national associations;
- (c) To provide the competent bodies of the TIR Convention, on a yearly basis, with global data of claims lodged, paid and pending;
- (d) To provide the competent bodies of the TIR Convention with timely and well founded information on trends in the number of non-terminated TIR operations, claims lodged or pending that might give rise to concerns with regard to the proper functioning of the TIR system or that could lead to difficulties for the continued operation of its guarantee system;
- (e) To provide the competent bodies of the TIR Convention with statistical data on the number of TIR Carnets distributed to each Contracting Party;
- (f) To provide, at the request of the TIRExB, full and complete information on the functioning of the TIR system, provided such request does not infringe legislation concerning confidentiality, data protection, etc.; in case such information cannot be given, the international organization will specify the legal provisions or other reasons prohibiting the exchange of information;
- (g) To provide the TIRExB with details of the issuing price by the international organization of each type of TIR Carnet;
- (h) To take all reasonable steps to reduce the risk of counterfeiting TIR Carnets;
- (j) To take the appropriate corrective action in cases where faults or deficiencies with the international Customs document, the TIR Carnet, have been detected;
- (k) To fully participate in cases where the TIRExB is called upon to facilitate the settlement of disputes;
- (l) To ensure that any problem involving fraudulent activities or other difficulties, with regard to the application of the TIR Convention, is immediately brought to the attention of the TIRExB;

- (m) [On the basis of the Recommendation adopted by the Administrative Committee on 20 October 1995] [In accordance with Annex 10] on the [Introduction of a] control system for TIR Carnets, to manage such a control system with national guaranteeing associations affiliated to the international organization and the Customs authorities and to inform the Contracting Parties and the competent body or bodies of the TIR Convention of significant problems encountered in the system;
 - (n) To provide the competent bodies of the TIR Convention with statistics and data on the performances of Contracting Parties with regard to the control system;
 - (o) To seek continuously to enhance the control system in order to improve its efficiency as a risk management and anti-fraud tool;
 - (p) To be available for meetings with the TIRExB, the TIR Secretary, the TIR secretariat and other key organizations, active in the field of TIR;
 - (q) To offer its good offices and experiences to support the training of interested parties, e.g. national associations.
3. The Administrative Committee shall revoke the authorization in case of serious or repeated non-compliance with these conditions and requirements. Should the Administrative Committee decide to revoke the authorization the decision will become effective at the earliest six (6) months after the date of revocation.
4. The authorization of an international organization under the terms set out above shall be without prejudice to that organization's responsibilities and liabilities under the Convention.
