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**ECONOMIC COMMISSION FOR EUROPE**

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting Transport

Ad hoc Expert Group on Phase III of the TIR Revision  
(Fourth session, 3 October 2005, agenda item 3)

**CONSIDERATIONS OF AMENDMENT PROPOSALS TO ARTICLES 8 AND 11**

Transmitted by the Government of the Netherlands

1. At its third session (Geneva 19 and 20 May 2005), the Ad hoc Expert Group on Phase III of the TIR Revision accepted an offer by the Government of the Netherlands to prepare a proposal for incorporation of Article 8.7 into Article 11 and to draft a proposal for the introduction of a new Annex 9, Part III, containing minimum conditions and requirements for authorized international organizations (TRANS/WP.30/2005/14, paras. 15-16).
2. In Annex to this document, the secretariat reproduces the proposals, transmitted by the Government of the Netherlands.

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## Annex

### Proposal from the Netherlands for Article 6.2 bis, 8 and 11 of the TIR Convention

As a consequence of the decision taken at the third session of the Ad hoc Expert Group on Phase III, to create a definition of the term “international organization” as new article 1 (r) (see: TRANS/WP.30/2005/24, paragraph 16) the following wording as proposed for **Article 6.2 bis**:

**2. bis. An international organization shall be authorized by the Administrative Committee to take on responsibility for the ~~effective~~<sup>1</sup> organization and functioning of an international guarantee system and to print and distribute TIR Carnets. The authorization shall be granted as long as the organization fulfils the ~~minimum~~<sup>2</sup> conditions and requirements, laid down in Annex 9, Part III, to this Convention. The authorization shall be revoked if the fulfillment of these criteria is no longer ensured.”**

With reference to the discussions at the 2<sup>nd</sup> meeting of the Ad hoc Expert Group on Phase III of the TIR Revision Process (see document TRANS/WP.30/2004/38, paragraphs 13 and 14) and the discussions at the 3<sup>rd</sup> meeting of that group (see document TRANS/WP.30/3005/24, paragraphs 15 and 16 (second)), the Dutch administration proposes as follows.

### 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 noted 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 payment of such sums.**

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<sup>1</sup> “Effective”, according to Merriam-Webster Dictionary, means: “producing or capable of producing a desired result”. It is obvious that the desired result is the existence and well functioning of an international guarantee system. Unless a definition is given for “an effective organization and functioning of an international guarantee system”, the reference to “effective” seems to be obsolete and should be deleted.

<sup>2</sup> The reference to “Minimum” seems to be obsolete. Reason: Annex 9, part III, of the Convention should contain all the necessary conditions and requirements applicable within all the Contracting Parties. If, in the future, the Administrative Committee is of the opinion that another condition or requirement is needed, Annex 9, part III, of the Convention should be changed accordingly.

Comments to Article 8, paragraph 1

*Administrative fines*

*The liability of the guaranteeing associations as provided for in Article 8, paragraph 1 does not include administrative fines or other pecuniary sanctions.*

*Collection of additional sums*

*Article 8, paragraph 1, allows Customs authorities to collect additional sums such as liquidated damages or other penalties from the holder of the Carnet should they deem that to be necessary.*

- 2. Each Contracting Party shall determine the maximum sum per TIR Carnet, which may be claimed from the guaranteeing association on the basis of the provision of paragraph 1 above.**

Explanatory Notes to Article 8, paragraph 2

0.8.2-1 Customs authorities are recommended to limit to a sum equal to US\$ 50,000 per TIR Carnet the maximum amount which may be claimed from the guaranteeing association. The following types of goods cannot be transported under cover of TIR Carnet, given the extraordinarily high risk of fraud involved:

- (1) Undenatured ethyl alcohol of an alcoholic strength by volume of 80% vol. or higher (HS code: 22.07.10)
- (2) Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol.; spirits, liqueurs and other spirituous beverages; compound alcoholic preparations of a kind used for the manufacture of beverages (HS code 22.08)
- (3) Cigars, cheroots and cigarillos, containing tobacco (HS code 24.02.10)
- (4) Cigarettes containing tobacco (HS code: 24.02.20)
- (5) Smoking tobacco, whether or not containing tobacco substitutes in any proportion (HS code: 24.03.10).

0.8.2-2 In accordance with Article 4 of the Convention, goods carried under the TIR procedure shall not be subjected to the payment or deposit of any import or export duties and taxes whatsoever, even if the duties and taxes at risk exceed the amount of US\$ 50,000 for consignments transported under the normal TIR Carnet or a similar sum fixed by the national Customs authorities. In such cases Customs authorities in transit countries could however, in conformity with Article 23 of the Convention, require road vehicles to be escorted at the carriers' expense on the territory of their country.

**3. The liability of the guaranteeing association to the authorities of the country where the Customs office of departure is situated shall commence at the time when the TIR Carnet is accepted by the Customs office. In the succeeding countries through which goods are transported under the TIR procedure, this liability shall commence at the time when the goods enter these countries or, where the TIR transport has been suspended under Article 26, paragraphs 1 and 2, at the time when the TIR Carnet is accepted by the Customs office where the TIR transport is resumed.**

**4. The liability of the guaranteeing association shall cover not only the goods which are enumerated in the TIR Carnet but also any goods which, though not enumerated therein, may be contained in the sealed section of the road vehicle or in the sealed container. It shall not extend to any other goods.**

Explanatory Note to Article 8, paragraph 4

0.8.4 If the guarantee is questioned for goods not listed in the TIR Carnet, the administration concerned should indicate the facts on which it based its opinion that the goods were contained in the sealed section of the road vehicle or the sealed container.

**5. For the purpose of determining the duties and taxes mentioned in paragraph 1 of this Article, the particulars of the goods as entered in the TIR Carnet shall be assumed to be correct, in the absence of evidence to the contrary.**

Explanatory Note to Article 8, paragraph 5

0.8.5 1. In the absence in the TIR Carnet of particulars detailed enough to enable charges on the goods to be determined, the Parties concerned may produce evidence of their precise nature.

2. If no evidence is furnished, duties and taxes will be charged, not at a flat rate unrelated to the nature of the goods, but at the highest rate applicable to the kind of goods covered by the particulars in the TIR Carnet.

**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;**
  - (b) notify the guaranteeing association in writing of the non-discharge, within a period of one year from the date of acceptance of the TIR Carnet by those authorities. The same provision shall apply where the certificate of termination of the TIR operation was obtained in an improper or fraudulent manner, save that the period shall be two years;**

*Comment to Article 11, paragraph 1 (b)*

*Time limit for notifications*

*As regards the time limit for the notification to the national guaranteeing association of the non-discharge of TIR Carnets, the date of receipt and not the date of dispatch is the decisive one. However, the method of proof of notification is left to the Customs administration concerned (registered mail, for example being one example of proof of reception). If the time limit is exceeded the national guaranteeing association is not liable anymore.*

- (c) when payment of sums mentioned in Article 8, paragraph 1, becomes due, as far as possible, require payment from the person or persons directly liable before making a claim against the guaranteeing association;**
- (d) in accordance with the provisions of paragraph 2, have the right to claim payment of the sums mentioned in Article 8, paragraph 1, from the guaranteeing association.**

Comment to Article 11, paragraph 1 (d)

*Payment of duties and taxes*

*The competent authorities should restrict themselves in their recourse to the guaranteeing associations to the payment of the duties and taxes evaded applying to the portion of goods for which irregularities have been committed.*

**2. 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 has been 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 2

0.11-2 In deciding whether or not to release the goods or vehicle, Customs 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.

**3. 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 amounts claimed, or to send to the competent authorities a motivated opposition to the claim for payment. The sums paid shall be reimbursed to the association if, within the two years following the date on which the claim for payment was made, it has been established to the satisfaction of the Customs authorities that no irregularity was committed in connection with the transport operation in question.**

Explanatory Note to Article 11, paragraph 3

0.11-3 If a guaranteeing association is asked, in accordance with the procedure set out in Article 11, 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.

**CONSEQUENCES:**

- Article 4, Comment: “the comments to Explanatory Note 0.8.3” be replaced by “Explanatory Note 0.8.2-2”
- Article 10, paragraph 2: “article 8, paragraphs 1 and 2” be replaced by “article 8, paragraph 1”
- Annex 9, part I, paragraph 1. (f) (ii): “article 8 paragraph 3” be replaced by “article 8, paragraph 2”
- Annex 9, part II, paragraph 1. (e) (ii): “article 8, paragraphs 1 and 2” be replaced by “article 8, paragraph 1”
- Annex 9, part II, paragraph 1. (e) (ii): “article 8, paragraph 7” be replaced by “article 11, paragraph 1 (b)”
- 5. Examples of best practices, item 5.5, paragraph 2,
  - first indent: “article 8, paragraph 4” be replaced by “article 8, paragraph 3”
  - second indent: “article 8, paragraph 7” be replaced by “article 11, paragraph 1 (c)”
- 5. Examples of best practices, Table I,
  - item 10: “Expl. Notes 08.7 and 0.11-1” be replaced by “Article 11, paragraph 1 (a)”
  - item 11: “(Article 8.7)” be replaced by “(Article 11.1(b))”
- 6.2 Example Agreement, A. Undertaking, 1. (b) “article 8, paragraph 3” be replaced by “article 8, paragraph 2”
- 6.2 Example Agreement, B. Liability, 3.: “article 8, paragraph 4” be replaced by “article 8, paragraph 3”
- 6.2 Example Agreement, C. Maximum Guarantee per TIR Carnet. 5.: “Explanatory Note 0.8.3” be replaced by “Explanatory Note 0.8.2-1”

With reference to document TRANS/WP.30/2005/19, it is proposed to change ANNEX 9, Part I, as follows:

The following new paragraph 2 is inserted:

2. (a) ~~The guaranteeing association informs, without delay, the international organization of the reception of a claim for payment.~~<sup>3</sup> **The guaranteeing association shall have a period of three months, from the date when the claim for payment is made upon it, in which to pay the amounts claimed, or to send to the competent authorities a motivated opposition to the claim for payment.**
- (b) **If a guaranteeing association fails to comply with the provisions of paragraph (a) the competent authorities may rely on national regulations in requiring payment of the sums in question.**

Renumber paragraph 2, 3 and 4 into paragraph 3, 4 and 5

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<sup>3</sup> This item concerns the relation between the international organization and a national association as member of that organization. It is doubtful whether the TIR Convention should make a reference to relations between private partners?

**Proposal from the Netherlands for the revision of Annex 9 of the TIR Convention**

**Annex 9**

**Part III**

**AUTHORIZATION TO TAKE ON RESPONSIBILITY FOR THE ORGANIZATION  
AND FUNCTIONING OF AN INTERNATIONAL GUARANTEE SYSTEM AND TO  
PRINT AND DISTRIBUTE TIR CARNETS**

**~~Minimum~~<sup>4</sup>Conditions and requirements**

**Article 1**

**In order to be authorized by the TIR Administrative Committee, in accordance with article 6.2bis, the international organization accepts, in writing, the following:**

- 1. to take on responsibility for the ~~effective~~<sup>5</sup> organization and functioning of an international guarantee system, and**
- 2. to print and distribute TIR Carnets.**

**Article 2**

**Without prejudice to the provisions of the TIR Convention and whilst fully respecting the competencies of the Contracting Parties, the international organization accepts to perform the following functions:**

- 1. to provide the Contracting Parties of the TIR Convention via the national associations affiliated to it with certified copies of the global guarantee contract and proof of guarantee coverage;**

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<sup>4</sup> The reference to “Minimum” seems to be obsolete. Reason: Annex 9, part III, of the Convention should contain all the necessary conditions and requirements applicable within all the Contracting Parties. If, in the future, the Administrative Committee is of the opinion that another condition or requirement is needed, Annex 9, part III, of the Convention should be changed accordingly.

<sup>5</sup> “Effective”, according to Merriam-Webster Dictionary, means: “producing or capable of producing a desired result”. It is obvious that the desired result is the existence and well functioning of an international guarantee system. Unless a definition is given for “an effective organization and functioning of an international guarantee system”, the reference to “effective” seems to be obsolete and should be deleted.

- 2. to provide the competent body or bodies of the TIR Convention with information on the rules and procedures set out for the delivery of TIR Carnets by national associations;**
- 3. to provide the competent body or bodies of the TIR Convention, on a yearly basis, with global data of claims lodged, paid and pending;**
- 4. to provide the competent body or 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;**
- 5. to provide the competent body or bodies of the TIR Convention with statistical data on the number of TIR Carnets distributed to each Contracting Party;**
- 6. 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;**
- 7. to provide the TIRExB with details of the issuing price of each type of TIR Carnet delivered by it;**
- 8. to take all reasonable steps to reduce the risk of counterfeiting TIR Carnets;**
- 9. to take the appropriate corrective action in cases where faults or deficiencies with the TIR Carnet have been detected;**
- 10. to fully participate in cases where the TIRExB is called upon to facilitate the settlement of disputes;**
- 11. 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;**

- 12. on the basis of the Recommendation adopted by the TIR Administrative Committee on 20 October 1995 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;**
- 13. to provide the competent body or bodies of the TIR Convention with statistics and data on the performances of Contracting Parties with regard to the control system;**
- 14. to seek continuously to enhance the control system in order to improve its efficiency as a risk management and anti-fraud tool;**
- 15. to be available for meetings with the TIRExB, the TIR Secretary, the TIR secretariat and other key organizations, active in the field of TIR;**
- 16. to offer its good offices and experiences to support the training of interested parties, e.g. national associations.**

### **Article 3**

The international organization accepts to transfer annually, the total amount collected through a levy on each TIR Carnet delivered, determined by the TIR Administrative Committee, and required to finance the operation of the TIRExB and the TIR secretariat in accordance with Annex 8, Article 13 of the TIR Convention. Any balance left after the completion of the current year of the project, will be used towards financing of the TIRExB and the TIR secretariat in the following years.

### **Article 4**

The amount mentioned under Article 3 will be transferred in its entirety by 15 November each year to the UN Geneva General Fund. Particulars concerning the levy per TIR Carnet and the transfer of the amount due for a next year will be adjusted on an annual basis through an exchange of letters between the UNECE and the international organization, in accordance with the relevant decisions of the TIR Administrative Committee.

## Article 5

**The international organization accepts to provide full access to the offices and financial and statistical data, related to the TIR Convention, as well as appropriate data from the partners involved in financial transactions related to the distribution of TIR Carnets.**

## Article 6

**1. The international organization shall comply with the following conditions:**

**(a) Proven existence as an established organization representing the interests of the transport sector.**

Explanatory Note to Article 6(a)

9.III.6 (a) The provisions in Annex 9, Part III, paragraph 6 (a) cover organizations involved in the international trade of goods, including the international chamber of commerce.

**(b) Proof of sound financial standing and organizational capabilities enabling it to fulfil its obligations under the Convention.**

**(c) Proven knowledge of its staff in the proper application of the Convention.**

**(d) Absence of serious or repeated offences against Customs or tax legislation.**

**(e) Shall agree to implement faithfully all decisions adopted by the Administrative Committee and the TIR Executive Board.**

***[2. The international organization shall, in case it has been informed of the reception of a claim for payment by a national guaranteeing association, have a period of one month to inform the guaranteeing association of its position concerning the claim for payment.]<sup>6</sup>***

**3. Authorization of an organization under the terms set out above shall be without prejudice to that organization's responsibilities and liabilities under the Convention.**

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<sup>6</sup> This paragraph seems to be obsolete. The item concerns the relation between the international organization and a national association as member of that organization. It is doubtful whether the TIR Convention should make a reference to relations between private partners.

**Article 7**

**In case the Administrative Committee decides to revoke the authorization in accordance with Article 6.2.bis of the Convention, the decision will become effective [at least] six (6) month after the date of the revocation.**

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