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### **Economic Commission for Europe**

#### **Inland Transport Committee**

#### **Working Party on Rail Transport**

##### **Seventieth session**

Geneva, 22-24 November 2016

Item 10 of the provisional agenda

**New convention on the facilitation of crossing  
of frontiers for passengers and baggage carried by rail**

### **Report of the Informal Group of Experts on the draft new Convention on the facilitation of crossing of frontiers for passengers and baggage carried by rail\***

**Transmitted by the Organization for Cooperation between Railways**

#### **Background and mandate**

At its previous session, the Working Party took note of the work done by the Informal Group of Experts on the preparation of a new convention on the facilitation of crossing of frontiers for passengers and baggage carried by rail. This document prepared by Organization for Cooperation between Railways (OSJD) is the report of the session of the Informal Group of Experts on the 26-27 July 2016. At that session, the group analyzed all comments received so far from various stakeholders and, therefore, the report provides a full reflection of the current state of play of the draft new Convention.

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\* The present document is being issued without formal editing.

## Annex

### Aide-memoire

for the meeting of Informal Working Group under the aegis of the UNECE ITC on development of Convention on facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail (26-27 July 2016 Warsaw).

Representatives from the following countries and organizations took part in the meeting of the Informal Working Group under the aegis of the United Nations Economic Commission for Europe (UNECE) Inland Transport Committee (ITC) on the development of a Convention on the facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail (hereinafter referred to as Convention):

- Republic of Kazakhstan,
- People's Republic of China,
- Poland,
- Russian Federation,
- Ukraine,

as well as representatives from the UNECE secretariat, the Intergovernmental Organization for International Carriage by Rail (OTIF) secretariat and the OSJD Committee.

Mr. Viktor Zhukov, Deputy Chairman of the OSJD Committee, opened the meeting and informed the meeting participants about the support given by the UNECE secretariat to activities carried out in the field of facilitation of border crossing procedures for railway transport in international passenger traffic.

#### **The meeting adopted the following agenda:**

1. Consideration of remarks and proposals submitted by the Republic of Belarus, Republic of Kazakhstan, European Commission Directorate General Mobility and Transport (DG MOVE), Directorate General Taxation and Customs Union (DG TAXUD) and OTIF with regard to the draft Convention on the facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail.
2. Combination of proposals and remarks in order to prepare a consolidated text of draft Convention.
3. AOB.

#### **The outcome of discussions of the agenda:**

##### *Under Item 1 of the agenda*

The Chairman of the meeting, Mr. Viktor Zhukov informed the Informal Working Group on the progress of work to draft the Convention and on decisions taken within the UNECE ITC Working Party on Customs Questions affecting Transport (WP.30) and Working Party on Rail Transport (SC.2). The Chairman presented the remarks and comments submitted by the Republic of Belarus, the Republic of Kazakhstan, the OTIF secretariat, the UNECE secretariat, DG MOVE and DG TAXUD.

The meeting participants from the Russian Federation provided papers for consideration on preparing the draft Convention and a summary table of remarks and

proposals and also informed about the progress of work with regard to the facilitation of border crossing procedures.

The meeting participants thanked the representatives from the Russian Federation for the work carried out.

Being of progressive nature, the draft new Convention includes a glossary of new modern terms and definitions and is aimed at positive solutions of border crossing procedures for railway transport of passengers, luggage and load luggage in the Eurasian area, in view of new technologies and innovations, which will surely contribute to the preservation and improvement of international passenger traffic between East and West.

The chairman of the meeting thanked the representatives from the Russian Federation for their drafting comments on all the remarks submitted by members of the Informal Working Group.

The Informal Working Group discussed the remarks submitted and adopted the following decisions.

1. To continue work in order to implement decisions taken by the Working Parties (WP.30 and SC.2) as well as those made at the 78th session of the UNECE ITC with regard to developing a multilateral framework Convention on the facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail for the purpose of reducing physical and non-physical barriers for border crossing and creating institutional and legislative conditions to ensure the seamless transportation of passengers of contracting States in view of the existing new realities.

2. To draft a new version of Article 3 and to reword Article 3, paragraph 3 as follows:

“This Convention shall not prevent the application of greater facilities which Contracting Parties grant or may wish to grant either by unilateral provisions or by virtue of bilateral or multilateral agreements provided that such facilities do not impede the application of the provisions of this Convention”.<sup>1</sup>

The availability of a general provision in this Convention (Article 3), stipulating the conclusion of bilateral agreements, is not adverse to legislative practices within the framework of UNECE ITC, whereby Annex 9 of the International Convention on the Harmonization of Frontier Controls of Goods (1982) serves as example. The Convention provides the establishment of harmonized conditions for interaction between Parties.

3. To kindly request all Parties to submit their comments, remarks and proposals as to paragraphs 2 and 3 of Article 4 as well as those terms and definitions which will be used in these paragraphs. The meeting participants also proposed considering the possibility of using terminology available in Annex 9 of the Harmonization Convention.

4. To propose that the Parties should consider the necessity to finalize Article 9 in view of international practices existing in other modes of transport and peculiarities of national legislation of the parties with regard to state border crossing procedures.

5. To recommend that Article 14, paragraph 2 should be again revised and propose a new edition of this paragraph that may stipulate more effective types of control and procedures for border crossing.

The Republic of Kazakhstan reserved its position as to Article 14.

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<sup>1</sup> The text is taken from Article 49 of the TIR Convention, 1975.

6. The leading performer shall finalize new editions of the concluding provisions of this Convention, based on proposals made by the representative of the UNECE secretariat:<sup>2</sup>

**“Article ...**

**Signature, ratification, acceptance, approval and accession**

1. This Convention deposited with the Secretary-General of the United Nations shall be open to participation of all States and regional economic integration organizations constituted by sovereign States which have competence to negotiate, conclude and apply international agreements on matters covered by the Convention.

2. The regional economic integration organizations referred to in paragraph 1 may, for the matters within their competence, exercise on their own behalf the rights and fulfill the responsibilities which this Convention otherwise confers on their member States which are Contracting Parties to this Convention. In such cases, the member States of the said Organizations shall not be entitled to exercise individually, such rights, including the right to vote.

3. States and the regional economic integration organizations referred to above may become Contracting Parties to this Convention:

(a) by depositing an instrument of ratification, acceptance or approval after signing it, or

(b) by depositing an instrument of accession.

4. This Convention shall be open from ... until ... inclusive for signature at the Office of the United Nations at Geneva by all the States and the regional economic integration organizations referred to in paragraph 1.

5. From ... it shall also be open for their accession.

6. The instruments of ratification, acceptance, approval or accession shall be deposited with the Secretary-General of the United Nations.

**Article ...**

**Entry into force**

1. This Convention shall enter into force ... months after the date on which ... States have deposited their instruments of ratification, acceptance, approval or accession.

2. After ... States have deposited their instruments of ratification, acceptance, approval or accession, this Convention shall enter into force for further Contracting Parties ... months after the date of the deposit of their instruments of ratification, acceptance, approval or accession.

3. Any instrument of ratification, acceptance, approval or accession deposited after the entry into force of an amendment to this Convention shall be deemed to apply to this Convention as amended.

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<sup>2</sup> These proposals include using the wording of Articles 16-26 of the International Convention on the Harmonization of Frontier Controls of Goods, 1982.

4. Any such instrument deposited an amendment has been accepted in accordance with the procedure in Article ... but before it has entered into force shall be deemed to apply to this Convention as amended on the date when the amendment enters into force.

### **Article ... Denunciation**

1. Any Contracting Party may denounce this Convention by so notifying the Secretary-General of the United Nations.
2. The denunciation shall take effect ... months after the date of receipt by the Secretary-General of the notification of denunciation.

### **Article ... Termination**

If, after the entry into force of this Convention, the number of States which are Contracting Parties is for a period of 12 consecutive months reduced to less than ..., the Convention cease to have effect from the end of the 12-month period.

### **Article ... Settlements of disputes**

1. Any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention shall, so far as possible, be settled by negotiation between them or by other means of settlement.
2. Any dispute between two or more Contracting Parties concerning the interpretation or application of this Convention which cannot be settled by the means indicated in paragraph 1 of this Article shall, at the request of one of them, be referred to an arbitration tribunal composed of as follows: each Party to the dispute shall appoint an arbitrator and these arbitrators shall appoint another arbitrator, who shall be chairman. If, three months after receipt of a request, one of the Parties has failed to appoint an arbitrator or if the arbitrators have failed to elect the chairman, any of the Parties may request the Secretary-General of the United Nations to appoint an arbitrator or the chairman of the arbitration tribunal.
3. The decision of the arbitration tribunal established under the provisions of paragraph 2 shall be binding on the Parties to the dispute.
4. The arbitration tribunal shall determine its own rules of procedure.
5. Decisions of the arbitration tribunal shall be taken by majority vote, based on existing agreements between the Parties to the dispute and general international law.
6. Any controversy which may arise between the Parties to the dispute as regards the interpretation and execution of the award may be submitted by any of the Parties for judgment to the arbitration tribunal which made the award.
7. Each Party to the dispute shall bear the costs of its own appointed arbitrator and of its representatives in the arbitral proceedings; the costs of the chairman and the remaining costs shall be borne in equal parts by the parties to the dispute.

### **Article ... Reservations**

1. Any Contracting Party may, at the time of signing, ratifying, accepting or approving this Convention or acceding to it, declare that it does not consider itself bound by Article ..., paragraphs 2 to 7, of this Convention. Other Contracting Parties shall not be bound by these paragraphs in respect of any Contracting Party which has entered such a reservation.
2. Any Contracting Party having entered a reservation as provided for in paragraph 1 of this Article may at any time withdraw such reservation by notifying the Secretary-General of the United Nations.
3. Apart from the reservations provided for in paragraph 1 of this Article, no reservation to this Convention shall be permitted.

### **Article ... Procedure for entering amendments in this Convention**

1. This Convention, including its Annexes, may be amended upon the proposal of any Contracting Party by the procedure specified in this Article.
2. ...
3. Any proposed amendment communicated in accordance with the preceding paragraph shall come into force with respect to all Contracting Parties three months after the expiry of a period of 12 months following the date of communication of the proposed amendment during which period no objection to the proposed amendment has been communicated to the Secretary-General of the United Nations by a State which is a Contracting Party or by a regional economic integration organization, which then acts within the conditions specified in Article ..., paragraph 2, of this Convention.
4. If an objection to the proposed amendment has been communicated in accordance with the provisions of paragraph 3 of this Article, the amendment shall be deemed not to have been accepted and shall have no effect whatsoever.

### **Article ... Requests, communications and objections**

The Secretary-General of the United Nations shall inform all Contracting Parties and all States of any request, communication or objection under Article ... and of the date on which any amendment enters into force.

### **Article ... Review Conference**

After this Convention has been in force for five years, any Contracting Party may, by notification to the Secretary-General of the United Nations, request that a conference be convened for the purpose of reviewing the Convention, indicating the proposals which should be dealt with by the conference. In this case:

- (i) the Secretary-General of the United Nations shall notify all the Contracting Parties of the request and invite them to submit, within a period of three months,

their comments on the original proposals and such other proposals as they may wish the conference to consider;

(ii) the Secretary-General of the United Nations shall also communicate to all the Contracting Parties the text of any other proposals made and shall convene a review conference if, within a period of six months from the date of that communication, not less than one third of the Contracting Parties notify the Secretary-General of the United Nations of their concurrence with the convening of such a conference;

(iii) However, if the Secretary-General of the United Nations considers that a review proposal may be considered as a proposed amendment under paragraph 1 of Article ..., he may, by agreement with the Contracting Party which has made the proposal, implement the amendment procedure provided for in Article ... instead of the review procedure.

### **Article ... Notifications**

In addition to the notifications and communications provided for in Articles ... and ..., the Secretary-General of the United Nations shall notify all States of the following:

- (a) signatures, ratifications, acceptances, approvals and accessions under Article ...;
- (b) the dates of entry into force of this Convention in accordance with Article ...;
- (c) denunciations under Article ...;
- (d) the termination of this Convention under Article ...;
- (e) reservations under Article ....

### **Article ... Certified true copies**

After ... the Secretary-General of the United Nations shall transmit two certified true copies of this Convention to each of the Contracting Parties and to all States which are not Contracting Parties”.

The meeting participants kindly request the parties concerned to submit their remarks and proposals on the abovementioned decisions before 1 September 2016 to the leading performer i.e. Russian Federation (klimentovskayaap@fpc.ru, moiseevim@fpc.ru), the UNECE secretariat (artur.bouten@unece.org) and the OSJD Committee (osjd@osjd.org.pl, cutieru@osjd.org.pl).

#### ***Under Item 2 of the agenda***

Having considered the draft Convention on facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail and the table of comments thereto, the meeting modified the draft Convention and table accordingly discussions.

The meeting participants kindly requested the leading performer to prepare a consolidated draft text of the Convention in the Russian language before 15 September 2016 and transmit this draft text to the UNECE secretariat, the OSJD Committee and the OTIF secretariat before 20 September 2016.

The meeting participants kindly requested the UNECE secretariat to provide translation of the draft text of new Convention into English in accordance with requirements and standards of the United Nations, for the purpose of it be considering at the forthcoming meetings of WP.30 and SC.2.

*Under Item 3 of the agenda*

Mr. Zhukov, Deputy Chairman of the OSJD Committee, informed the meeting of the decision of the seventy-eighth session of the UNECE ITC in respect of a high level conference to be held at the seventieth session of SC.2 (22-24 November 2016) to discuss the situation of international passenger traffic between East and West and the need of states, railways, passenger companies and international organizations as OSJD, OTIF, International Rail Transport Committee (CIT) and International Union of Railways (UIC) to prepare for it.

The UNECE is kindly requested to prepare an information letter with invitation for the chief executives of the UNECE member States to participate in the conference and prepare an analysis and proposals on the improvement of international passenger traffic between East and West.

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