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Item 4(d) of the provisional agenda

Revision of the Convention:

Proposals transmitted by the Government of the Russian Federation

Amendment proposal for Article 11 of the TIR Convention

Note by the secretariat

I. Background and mandate

1. The Government of the Russian Federation had submitted a list of proposals to amend various provisions of the body of the Convention as well as of Annex 9. The proposals as originally submitted are contained in document ECE/TRANS/WP.30/AC.2/2014/14. The Committee has concluded its considerations on the amendment proposals referred to in this document over the course of several sessions, except for one. For ease of reference, the secretariat has issued the present document, containing the outstanding proposal by the delegation of the Russian Federation, to amend Article 11 with a new paragraph 4bis. In addition, the document contains an overview of previous discussions, comments thereto and related references.

II. Amendment proposal

2. The delegation of the Russian Federation proposed to add a new paragraph 4bis to Article 11, stipulating that claims for payment can be sought through the competent courts within deadlines prescribed in the national guarantee agreement. The proposal reads as follows:

“If the guaranteeing association does not pay the amount[s] mentioned in Article 8, paragraphs 1 and 2, within the period of three months set in the Convention, the competent agencies may claim payment of such sums through the courts within a period established in agreement with the national guaranteeing association”.

3. The present document is prepared on the basis of the text of the proposal as translated from the originally submitted Russian language into English (see ECE/TRANS/WP.30/AC.2/2014/14). With regard to the English wording of this proposal,

the secretariat would propose some editorial changes for the purpose of ensuring consistency in the use of terminology established in the text of the Convention. Against this background, it is recommended to change the word “agencies”, as it does not appear in any other provisions and is, thus, inconsistent with the current terminology of the TIR Convention. Therefore, the secretariat would propose to replace the word “agencies” with “the competent authorities” which would be in line with the original text in Russian and with terms used in other articles.

4. In the English language version of this proposal, the use of the phrase “may claim payment” with reference to a claim that has already been made, but for which deadlines have not been met, could lead to ambiguity. For this reason, the secretariat would recommend replacing this phrase with “may require payment” which would be in line with the original text in Russian and with terms used in other articles.

5. In the second line, it is recommended to replace the phrase “set in” with “prescribed by”, so as to align it with the original text in Russian and with similar references used in the Convention.

6. As concerns the reference “in agreement with [...]”, the term used in the Convention is “written agreement or other legal instrument between the association and the competent authorities of the Contracting Party in which it is established” (see Annex 9, Part I, paragraph 1 (d) where the guarantee agreement is defined). Therefore, the reference in the current text may imply that such agreement on timeline would be concluded separately. As such, it is recommended to use the existing terminology and replace the reference accordingly, in order to ensure that the proposal is editorially and substantively consistent with the provisions of the TIR Convention.

7. Taking the above into account, the proposal would read:

“If the guaranteeing association does not pay the amount[s] mentioned in Article 8, paragraphs 1 and 2, within the period of three months ~~set in~~ **prescribed by** the Convention, the competent ~~agencies~~ **authorities** may ~~claim~~ **require** payment of such sums through the courts within a period established in **the written agreement or other legal instrument** ~~with the national guaranteeing~~ **between the association and the competent authorities of the Contracting Party in which it is established**”.

8. The above editorial alignments do not appear to compromise the substance of the proposal as submitted by the delegation of the Russian Federation.

9. As a final point, attention is drawn to Explanatory Note 0.11.4. The Explanatory Note consists of two sentences that appear to refer to two different elements. The first sentence could be considered very similar to the proposal under discussion. It follows that, in the event that the proposal is accepted and included as a new paragraph 4**bis**, this sentence would have to be reconsidered as its value-added in its current form may come into question. However, the second sentence may be considered a stand-alone element and reads as follows:

“The time-limit [of three months] also applies in the event that the guaranteeing association, on receipt of the claim, consults the international organization referred to in Article 6, paragraph 2 over its position concerning the claim”.

10. The above sentence ensures that the time-frame established in Article 11 is strictly adhered to regardless of any additional or time-consuming procedures or communications that may take place within the guarantee chain. As such, this sentence is recommended to remain untouched in the event that E.N. 0.11.4 is in any way altered.

III. Summary of the discussions of the Committee on this proposal

11. The Committee has been discussing this amendment proposal since its sixty-second session (October 2015). As a starting point, some delegations were of the view that the corresponding Explanatory Note 0.11.4 as currently in force already provides for a substantive equivalent to this proposal, and thus its conversion into a new paragraph 4bis could be a way forward. Other views expressed included that (a) the existing text is sufficient, and that further detailed provisions in this regard should be incorporated in the guarantee agreement between customs authorities and national guaranteeing associations and (b) that the existing Explanatory Note 0.11.4 could be amended or (c) replaced with a new formulation. To this end, the Committee, at its sixty-fourth session, considered document ECE/TRANS/WP.30/AC.2/2016/19, prepared by the secretariat and containing a list of alternative ways to address the concerns raised by the delegation of the Russian Federation.

12. At the sixty-fourth session of the Committee, the Russian Federation reiterated the reasoning of this proposal and stated that the alternative ways proposed by various delegations would not be suitable for its purposes. Specifically, according to some domestic civil legislation in the Russian Federation, the timeframe for the customs authorities to resort to the national judicial system is limited to a rather short period of time, which is not enough for customs authorities to complete their investigations in due course. In this case the provisions of law in the Russian Federation are superior to the terms and conditions agreed between the customs authorities and the national guarantee association in the guarantee contract. To overcome this restriction, according to the delegation of the Russian Federation, a provision within the text of the Convention would be needed, as this would enable customs authorities in the Russian Federation to establish, in their agreement with the national guaranteeing association, timeframes based on the internationally binding text of the Convention, which enjoys a higher legal value compared to the national civil legislation. As such, the delegation of the Russian Federation urged the Committee to support the proposal as originally submitted.

13. During the discussions at the sixty-fifth session of the Committee, it transpired that a number of delegations had not changed their position on the proposed amendment and thus would not be able to support it. At the same time, some delegations indicated that, in principle, they could agree with the proposal and would wish to continue discussions with a view to reaching a mutually acceptable decision. Against this background the secretariat was requested to maintain the item on the agenda for further discussion at the current session.

14. Detailed information on the evolution of the discussions on this proposal can be found in ECE/TRANS/WP.30/AC.2/127, para. 34(d), ECE/TRANS/WP.30/AC.2/129, para. 36(b), ECE/TRANS/WP.30/AC.2/131, para 45(a) and ECE/TRANS/WP.30/AC.2/133, para. 43(a).

IV. Considerations by the Committee

15. The Committee may wish to continue its consideration of the proposal, taking into account previous discussions, with a view to identifying, if possible, a mutually acceptable approach.