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## Economic Commission for Europe

### Administrative Committee for the TIR Convention, 1975

#### Fifty-third session

Geneva, 9 February 2012

Item 5 (a) of the provisional agenda

#### Revision of the Convention

## Amendments to the Convention with regard to the authorization of an international organization

### Note by the secretariat

#### I. Background and mandate

1. Following extensive deliberations, the UNECE Working Party on Customs Questions affecting Transport (WP.30) has approved and submitted to AC.2 for consideration and possible adoption amendment proposals to Article 6.2 bis and Annex 9, introducing conditions and requirements for an international organization which is authorized to take on the responsibility for the effective organization and functioning of an international guarantee system and to print and distribute TIR Carnets (ECE/TRANS/WP.30/258, para. 25). The background of these amendment proposals can be found in documents ECE/TRANS/WP.30/AC.2/2007/14, ECE/TRANS/WP.30/2009/5, ECE/TRANS/WP.30/2010/4 and Rev.1, 2 and 3, ECE/TRANS/WP.30/2011/6.

2. The final text of the amendment proposals, as approved by WP.30 on the basis of document ECE/TRANS/WP.30/2010/4/Rev.3, is reproduced in the annex. As highlighted in footnotes 1 and 2, the text contains two references to provisions, namely Articles 1 (r) and 11.4, which do not yet exist, but which are part of another package of amendment proposals (ECE/TRANS/TRANS/WP.30/AC.2/2010/3 and Corr. 1 (English only) thereto) which was adopted by the Committee at its fifty-first session in February 2011 and which has been circulated to the Contracting Parties by means of Depositary Notification C.N.326.2011.TREATIES-2. These proposals will enter into force on 13 September 2012, unless, by 13 June 2012, any Contracting Party to the Convention has notified the Secretary-General of the United Nations of its objection. Considering that any reference to a prospective provision, not yet being in force, could lead to legal complications, the secretariat proposes that, at this stage, these two references be deleted and, if required, be re-introduced at a later stage, once the future of the other package of amendments is known. The proposed modifications are given in **bold underlined** and in ~~strike through~~.

3. In line with the request of the Committee, at its forty-ninth session, that all amendment proposals be preceded by a rationale (ECE/TRANS/WP.30/AC.2/101, paragraph 22), the secretariat has also drafted a brief preamble for the underlying amendment proposals.

## Annex

### **Amendment proposals for adoption by the Administrative Committee for the TIR Convention**

The Administrative Committee,

Recognizing the vital role played in the application of the TIR Convention by the international organization which is authorized by the Administrative Committee to take on responsibility for the effective organization and functioning of an international guarantee system;

Stressing the need to unequivocally define, in the legal text of the TIR Convention, the roles and responsibilities of all players in the TIR system, in particular for the sake of transparency in its management;

Being convinced that the introduction of a new 9, part III on the conditions and requirements to be complied with by an international organization will complement the purpose of Annex 9 which addresses access to the TIR procedure by the private sector and which already deals with the authorization of national associations as well as natural and legal persons;

Recalling that the introduction of the below conditions and requirements in the legal text of the Convention will simplify the text of the written agreement between UNECE and the international organization in accordance with Explanatory Note 0.6.2 bis-2;

Has adopted the following amendments in accordance with the provisions of Article 59 of the Convention:

#### **Article 6, paragraph 2bis**

*Modify paragraph 2bis to read:*

2.bis An international organization shall be authorized by the Administrative Committee to take on responsibility for the effective organization and functioning of an international guarantee system. The authorization shall be granted as long as the organization fulfils the conditions and requirements laid down in Annex 9, Part III. The Administrative Committee may revoke the authorization if these conditions and requirements are no longer fulfilled.

#### **Annex 9, new part III**

*Insert a new part III to read:*

Authorization of an international organization, as referred to in Article ~~6~~<sup>1</sup>, to take on the responsibility for the effective 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 an international organization in order to be authorized, in accordance with Article 6.2bis of the Convention, by the Administrative Committee to take on the responsibility for the effective organization

<sup>1</sup> As a reference to Article 1 (r) is subject to the entry into force of the amendment proposals contained in document ECE/TRANS/TRANS/WP.30/AC.2/2010/3 and Corr. 1 thereto, it is proposed to change the reference to existing Article 6.

and functioning of an international guarantee system and to print and distribute TIR Carnets are:

(a) Proof of sound professional competence and financial standing for the effective organization and functioning of an international guarantee system and the organizational capabilities to fulfil its obligations under the Convention by means of annual submissions of consolidated financial statements duly audited by internationally recognized independent auditors;

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

2. Pursuant to the authorization, the international organization shall:

(a) 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) 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) provide the competent bodies of the TIR Convention, on a yearly basis, with data on claims lodged, pending, paid or settled without payment;

(d) provide the competent bodies of the TIR Convention with full and complete information on the functioning of the TIR system, in particular, but not limited to timely and well founded information on trends in the number of non-terminated TIR operations, claims lodged, pending, paid or settled without payment 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 international guarantee system;

(e) provide the competent bodies of the TIR Convention with statistical data on the number of TIR Carnets distributed to each Contracting Party, broken down by type;

(f) provide the TIR Executive Board with details of the distribution price by the international organization of each type of TIR Carnet;

(g) take all possible steps to reduce the risk of counterfeiting TIR Carnets;

(h) take the appropriate corrective action in cases where faults or deficiencies with the TIR Carnet have been detected and report these to the TIR Executive Board;

(j) fully participate in cases where the TIR Executive Board is called upon to facilitate the settlement of disputes;

(k) 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 TIR Executive Board;

(l) manage the control system for TIR Carnets, provided for in Annex 10 of the Convention, together with national guaranteeing associations affiliated to the international organization and the Customs authorities and to inform the Contracting Parties and the competent bodies of the Convention of problems encountered in the system;

(m) provide the competent bodies of the TIR Convention with statistics and data on the performance of Contracting Parties with regard to the control system provided for in Annex 10;

(n) conclude, not less than two months before the provisional date of entry into force or renewal of the authorization granted in accordance with Article 6.2bis of the Convention, a written agreement with the United Nations Economic Commission for Europe secretariat, mandated by and acting on behalf of the Administrative Committee,

which shall include the acceptance by the international organization of its duties set out in this paragraph.

3. When the international organization is informed by a guaranteeing association of a claim for payment, it shall, within a period of three (3) months, ~~as prescribed by Article 11, paragraph 4 of the Convention,~~<sup>2</sup> inform the guaranteeing association of its position concerning the claim.

4. All information acquired, directly or indirectly, by the international organization under the Convention, which is by nature confidential or which is provided on a confidential basis, shall be covered by the obligation of professional secrecy and shall not be used or processed neither for any commercial purpose nor for any other purpose than for which it has been provided or disclosed to any third party without the express permission of the person or authority that provided it. Such information may, however, be disclosed without permission to competent authorities of Contracting Parties to this Convention, where there is an authorization or obligation to do so pursuant to provisions of national or international law or in connection with legal proceedings. The disclosure or communication of information shall take place in full compliance with data-protection provisions in force.

5. The Administrative Committee shall have the right to revoke the authorization granted in accordance with Article 6.2bis in case of non-compliance with the above provisions. 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.

6. 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.

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<sup>2</sup> As a reference to Article 11, paragraph 4 is subject to the entry into force of the amendment proposals contained in document ECE/TRANS/TRANS/WP.30/AC.2/2010/3 and Corr. 1 thereto, it is proposed to delete this reference for the time being.