
Economic Commission for Europe

Inland Transport Committee

Working Party on Customs Questions affecting Transport

Informal Ad hoc Expert Group on digitalization of the Carnets de Passage en Douane (eCPD)

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Digitalization of the Carnets de Passage en Douane Options in order to amend the Conventions.

Options in order to amend the Conventions.

Note by the secretariat

I. Background / Introduction

1. The Expert Group at its first session discussed and agreed that in principle relevant to the digitalization of CPDs provisions should be prepared as amendment proposals to the two Conventions to be discussed and agreed by the contracting parties to the Convention and then, if possible, transmitted to the Secretary-General of the United Nations who shall circulate it to all Contracting Parties. The experts decided that they should focus their efforts on identifying the type of amendment proposals that should be suggested. Either new provisions should be proposed, or new annexes to the Conventions, or new protocols or a combination of those options...

2. The experts requested the secretariat to prepare for their next session, a document that provides a summary of the options exist in order to amend the Conventions including the possible pros and cons of each option. The current document includes a first attempt to summarize the possible options to amend the Conventions.

II. Provisions on amendment proposals

a. Customs Convention on the Temporary Importation of Private Road Vehicles, signed in New York on 4 June 1954

3. Article 42 of the Convention under Chapter VIII – Miscellaneous Provisions provides all rules concerning amendment proposals.

4. Any Contracting Party may propose one or more amendments to this Convention. The text of any proposed amendment shall be transmitted to the Secretary-General of the United Nations who shall circulate it to all Contracting Parties.

5. Any proposed amendment circulated in accordance with the preceding paragraph shall be deemed to be accepted if no Contracting Party expresses an objection within a period of six months following the date of circulation of the proposed amendment by the Secretary-General. Regional economic integration organizations which are Contracting Parties to this Convention, for the matters within their competence, shall exercise their right to express an objection. In such case the Member States of said organizations, which are Contracting Parties to this Convention, shall not be entitled to exercise individually such right.

6. The Secretary-General shall notify as soon as possible all Contracting Parties whether an objection to the proposed amendment has been expressed, and if no such objection has been expressed, the amendment shall enter into force for all Contracting Parties three months after the expiration of the period of six months referred to in the preceding paragraph.

b. Customs Convention on the Temporary Importation of Commercial Road Vehicles, of 18 May 1956

7. Article 41 of the Convention under Chapter IX – Final Provisions provides all rules concerning amendment proposals.

8. Any Contracting Party may propose one or more amendments to this Convention. The text of any proposed amendments shall be transmitted to the Secretary-General of the United Nations who shall transmit it to all Contracting Parties and inform all other countries referred to in Article 33, paragraph 1.

9. Any proposed amendment circulated in accordance with the preceding paragraph shall be deemed to be accepted if no Contracting Party expresses an objection within a period of six months following the date of circulation of the proposed amendment by the Secretary-General. Regional economic integration organizations which are Contracting Parties to this Convention, for the matters within their competence, shall exercise their right to express an objection. In such a case the Member States of said organizations, which are Contracting Parties to this Convention, shall not be entitled to exercise individually such right.

10. The Secretary-General shall, as soon as possible, notify all Contracting Parties whether an objection to the proposed amendment has been expressed. If an objection to the proposed amendment has been expressed, the amendment shall be deemed not to have been accepted and shall be of no effect whatever. If no such objection has been expressed the amendment shall enter into force for all Contracting Parties three months after the expiry of the period of six months referred to in the preceding paragraph.

11. Independently of the amendment procedure laid down in paragraphs 1, 2 and 3 of this Article, the annexes to this Convention may be modified by agreement between the competent administrations of all the Contracting Parties. The Secretary-General shall fix the date of entry into force of the new texts resulting from such modifications.

III. Options to amend the Conventions

a. Amending the temporary importation conventions

12. The eCPD future system cannot be implemented outside of an international legal framework. However, various options can be envisaged to enable the use of electronic message instead of the paper Carnet. The eCPD legal provisions could be included in the temporary importation Conventions, be formulated as an additional protocol to the temporary importation Conventions or could become an entirely new Convention. The advantages and disadvantages of these options are discussed below.

13. While this solution in principle appears appealing, there are complexities to be taken into account. The most significant one is found in articles 42 and 41 as described above. As per paragraph 2 of article 42 mentions thereto: “[...] Any proposed amendment circulated in accordance with the preceding paragraph shall be deemed to be accepted if no Contracting

Party expresses an objection within a period of six months following the date of circulation of the proposed amendment by the Secretary-General”.

14. As a result of the “veto power” of Contracting States to block an amendment, attempting such a possibly large scale revision/amendment process without guaranteed participation of all Contracting Parties in the negotiations runs a high risk of an objection being raised at that final stage, by Contracting Parties that were not present for the decisions, or that were out-voted during negotiations. This would prevent the amendments from coming into force resulting in the eCPD system not becoming operational even for those countries highly interested in it.

15. To increase the chances of having an amendment to the temporary importation Conventions accepted by all Contracting Parties, it could be envisaged that the implementation of the eCPD provision is optional and that countries could, for example, appoint eCPD Customs offices when they are ready to do so.

b. Additional Protocol to the Conventions

16. A supplementary Protocol would be a new legal instrument that would require signature, ratification and entry into force through the United Nations Depositary procedures. The main benefit of this option is that it may be agreed that it will be an optional Protocol and thus only Contracting States that wish to become Parties to the Protocol will be bound by the obligations therein. As such, the agreement reached will be open for accession to all current temporary importation Contracting Parties as and when they decide they are ready and willing to undertake such additional obligations as would be stipulated in the Protocol. It should be reiterated at this point that the paper based CPD procedure as laid down in the temporary importation Conventions will be simultaneously valid and operational, and the Protocol will be a separate albeit optional addition to the temporary importation Conventions. Thus, paper Carnets will continue to be recognized by the Customs authorities of Contracting Parties that have implemented the electronic system. Also, in the case of a Protocol, it should be further added that only Contracting Parties to the temporary importation Conventions would be able to become Parties to it. The Protocol would be managed under the same administrative structure as the temporary importation Conventions or a new structure could be foreseen, for instance an administrative committee in the framework of WP.30.

17. The questions to be addressed in the context of a protocol concern the nature and content of the legal instrument. For instance, would the new Protocol provide a framework of loosely defined obligations for implementation like the electronic Consignment Note (eCMR) Protocol, or would it give strict and detailed legal, technical and operational instructions as per Annex 11 to the TIR Convention? The technical description and details which will be included would not be sufficient to address the legal aspects of implementation. In this respect it is worth taking a closer look at e-CMR article 5, although some of its content may not be directly relevant to eCPD.

18. Article 5 of the eCMR Protocol is the only provision of the Protocol dealing with implementation of the electronic consignment note in very generic terms, allowing ample room for flexible arrangements between Contracting Parties. In practice this could translate into either subsequently negotiated additional annexes to the Protocol or even into a network of bilateral agreements. In the case of the eCMR in particular, no results have been, as of yet, produced and a group of experts have been established to prepare the functional and technical specifications of the future system.

19. At the time the eCMR was concluded, the parties had not yet studied the technical implications of an electronic consignment note, which is why they were not able to include anything more specific in the Protocol’s provisions.

20. In this respect, the eCPD is much more advanced due to initiatives already taken mainly by FIA secretariat, and thus legal provisions can be developed to enable the application of a system with concrete technical specifications. This will facilitate the identification of the necessary legal aspects to be addressed and will hopefully result in an

easily implementable system, also from a legal point of view. Furthermore, a framework protocol may also result in the absence of standard procedure for the final users of the system.

21. To ensure the continuation of the functioning of the current guarantee chain in case of an additional eCPD protocol, it will also be possibly necessary to revise any agreements – if any - between the Customs authorities and the national clubs etc.

c. New Convention

22. The main benefit of a new Convention on eCPD is that it could be acceded to by any United Nations Member State, even if they are not Contracting Parties to the temporary importation Conventions. Consequently, this new Convention might have to include many of the provisions already present in the temporary importation Conventions, concerning the operations of paper carnets.

23. Those countries that will be Contracting Parties to both the eCPD and temporary importation Conventions, will have to continue to accept paper Carnets, while at the same time operating the eCPD system. In order to simplify the relations among Contracting Parties to the new Convention and also ensure that the temporary importation Conventions will be terminated when all of its Contracting Parties ratify the new Convention, the following provision could be added: “Upon its entry into force, this Convention shall terminate and replace, in relations between the Contracting Parties to this Convention, the temporary importation Conventions.”

24. Countries that wish to entirely abandon the paper-based system have the possibility to renounce the temporary importation Conventions once the eCPD Convention enters into force. However, in doing so they would jeopardize the functioning of the temporary importation Conventions for those countries that did not ratify the eCPD Convention. Therefore, to avoid this it might be necessary to include special clauses that would enable the parallel functioning of the two procedures for a yet to be defined transitional period.

d. Other legal considerations

25. A system like the eCPD cannot be solely reliant on an international legal instrument for its implementation. It is clear that the relevant administrative and legal infrastructures should also exist in national jurisdictions. Just to give an example, it is necessary to ensure the legal status of electronic communications in terms of recognizing their validity, enforceability, and admissibility as evidence in a domestic justice system for the proper attribution of administrative or criminal liability in legal proceedings dealing with fraud, unauthorized access and other related offences. The capacity to investigate and prosecute eCPD related offences is of crucial importance for the effective and efficient functioning of the eCPD system at the national level.

IV. Considerations by the Experts Group

26. The Experts Group is invited to consider the examples of amendments as provide above and provide guidance as to the direction which the legal framework of eCPD could take.
