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Economic Commission for Europe

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Working Party on Customs Questions affecting Transport

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Item 4 (b) of the provisional agenda

International Convention on the Harmonization of Frontier

Controls of Goods (Harmonization Convention, 1982):

Proposal on a new Annex 10 on sea ports

Item 5 of the provisional agenda

International Convention to Facilitate the Crossing of Frontiers for

Passengers and Baggage carried by Rail, of 10 January 1952

Transmitted by the European Commission

In Annex, the secretariat transmits a letter by the European Commission, together with preliminary comments by the European Union and its Member States on draft Annex 10 to the Harmonization Convention and on a new Convention on the Facilitation of Border Crossing Procedures for Passengers, Luggage and Load-luggage carried in International Traffic by Rail.



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Mr Miodrag Pesut
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By e-mail:
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Dear Mr Pesut

With reference to the last meeting of WP.30 and your letter of 1 April, please find attached the following comments from the EU and its Member States with regard to the draft Annex 10 of the Harmonisation Convention and the draft of the new International Convention to facilitate the crossing of frontiers for passengers and baggage carried by rail.

As these documents have not yet been properly discussed by WP.30 and the EU has not yet completed its internal procedure, please consider our comments as preliminary.

Yours sincerely

(e-signed)
Susanne Aigner
Head of Unit

Enclosures: *Comments to the draft Annex 10 of the Harmonisation Convention;
*Comments to the draft of the new International Convention to facilitate
the crossing of frontiers for passengers and baggage carried by rail

Draft Annex 10 of the Harmonization Convention

Doc. ECE/TRANS/WP.30/2015/21

General comments:

- From a general perspective, the need for a new Annex 10 should be re-examined taking into account the provisions of the existing agreements and the body of the Convention itself. It has been reported that most of the subject matters, as planned to be regulated in the draft Annex 10, are already covered.
- The proposed Annex 10 is based on provisions for road and rail transport which are contained in Annex 8 and 9. However, it should be further analysed how these provisions fit for maritime transport, in particular as regards issues on congestions, waiting times, transport of live animals and perishable food and whether a more maritime-adapted wording could be used.
- Some of the proposed provisions of draft Annex 10 are of general nature (e.g. on controls) and could be applied to all kind of transports. Therefore, adding these to Annex 1 of the Convention should be considered.

Comments by Article:

- The last sentence under point II.E. (of the Note by the secretariat) needs to be further clarified and then adapted or deleted. It remains unclear what is meant by AEO facilities since AEO refers to operators and not to operations.
- Article 1, paragraph 3 refers to the application of international standards and agreements, unlikely for road and rail transport. What is the reason for this provision?
- Article 2 contains similar provisions on visa facilitations as already indicated for road and rail transport.
- Article 4: review numbering (should be Article 3). This Article contains the same provisions as for road transport. However, paragraph 3 cannot be applicable for maritime transport as the referred Article 7 of the Convention is valid only for road transport (inland frontiers). Moreover, the transport of live animals and perishable food by sea needs further analysis. Paragraph 1 refers to 'border control requirements', however it needs further clarification of what is meant under such border control requirements (suggested wording: border crossing procedures)
- Article 5: review numbering (should be Article 4, as there is only one paragraph, numbering (1) is not necessary, incorrect numbering also in (vi) and (vii)). Similar provisions as for rail transport. Paragraph 1(ii) the word 'inspections' shall be added after 'veterinary' (according to Definitions in Article 1).
- Article 6: review numbering (should be Article 5). This Article is very much inspired by Article 6 of the Annex 9 on rail transport which was agreed by the EU and its Member States and came into force in 2011. However, in paragraph (i), based on the definitions of Article 1 of the Convention it remains unclear what is

meant by the word "control" since only the terms "customs control" and "quality control" in addition to "... inspections" are defined in Article 1 of the Convention.

The new provision (ii) on granting facilitations and simplified control procedures needs further clarification as regards wording and concept: customs controls should be based on risk assessment (or risk analysis); this will lead to selective controls but not to facilitations for all consignments "to the extent possible".

Paragraph (iv – should read iii) seems to be covered already by a general Article 10 of the Convention, therefore we suggest to delete it, unless there is a particular need for it in case of maritime transport – that need shall be clarified.

- Article 7: review numbering (should be Article 6). Determination of time limits (and their reduction at the same time), if needed to be specified for maritime transport, should perhaps be left up to national legislation of each Contracting Party. Perhaps also review Annex 1 of the Convention, dealing with Harmonisation of customs controls and other controls. It should not be obligatory to monitor the achieved reduction in time line, in particular because of the existence of Article 9(8) on the Reporting mechanism.
- Article 8: review numbering (should be Article 7). The Article contains provisions which should be applied by all kind of transports. The EU doesn't see any specification related to sea ports and would suggest amending Article 9 and, if necessary, also Annex 9, Article 8 which contains similar provisions.
- Article 9: review numbering (should be Article 8), also for the Articles mentioned (should be Articles 1 to 7 of this Annex)

Doc. ECE/TRANS/WP.30/2015/21/Rev.1 – comments from EEC (Annex I-III) and Ukraine (Annex IV)

Annex I: The EU takes note of the comments sent by EEC and will be attentive to detailed discussions on them. The most important issues would be:

- The EU does not agree on the term '**state** control' used by EEC as it is not used throughout the Convention. The EU proposes to keep the term 'control'.
- Article 3: the EU agrees with the comment no. 3 (see EU comments to Article 4).
- Article 4(1)(i): the EU does not agree with the proposed deletion of the words 'if this is justified and is appropriate to the volume of freight traffic' as the round-the-clock should be optional, not obligatory for all seaports (checkpoints).
- Article 1 (2): by excluding the control mechanism the provisions are more general, like for Annex 9.

Annex II: The EU takes note of the general comment of EEC and agrees with the suggestion in paragraph 1.

Annex III: Taking into account our general comments the EU could agree with EEC that a possible revision of the Convention should be discussed. The need of this new Annex 10 could be then reconsidered.

Annex IV:

- Definition of 'an international seaport' – to be checked if this definition does not already exist in any legislative act. The EU would prefer to have this definition in Annex 10
- New point on cooperation between different stakeholders – although not against this idea, it should be checked if Article 4 of the Convention could not be aligned to fit this purpose.
- Article 3: new provision (v) – this suggestion relates to all kind of transport and should be included in the body of the Convention, if necessary.
- Article 5: new provisions (iii) we believe that this provision should be incorporated in national legislation rather than in an international convention; (iv) - first sentence – the proposal is not specific for maritime transport. Perhaps Article 10 of the Convention covers this provision already; (v) – to be further clarified if this provision relates to this new Annex
- Article 7: see the EU comment on Article 8

Informal document WP.30 (2015) no. 13 – comments from business operators of RU (Part 1) and IMO (Part 2)

Part 1: Article 8: reference to IMO FAL 65 Convention and other IMO recommendations shall be further clarified and analysed.

Part 2: Suggestion to include some provisions of IMO FAL 65 Convention – The EU is of the opinion that this proposal requires a detailed study and proposes that the TIR Secretariat analyses the IMO Convention in order to find out different possibilities. Moreover, we are not certain about the free availability of the IMO FAL 65 Convention and other IMO Recommendations.

Draft of a new Convention on the facilitation of border crossing procedures for passengers, luggage and load-luggage carried in international traffic by rail

Doc. ECE/TRANS/WP.30/2016/5

General comments:

- Consider the state of play and future of the existing International Convention to facilitate the crossing of frontiers for passengers and baggage carried by rail, 1952.
- Concerns relating to the accession to the new Convention
- Involvement of OTIF needed?
- Several provisions of this draft Convention, e. g. Article 3(1), Article 7(3), Article 10(2), Article 14, Article 16 refer to conclusion of bilateral or multilateral agreements. **This might support the EU position that the need for such a Convention has not been demonstrated.** The number of references to bilateral agreements well illustrates this. Furthermore, the practical benefit of the Convention is questionable.
- While the EU shares the general objectives of the draft Convention one should note that many existing bilateral agreements are outdated and need to be aligned with other international obligations. However, it is not clear if a new Convention would solve this problem.
- The terminology used in the draft Convention should be aligned with other legal instruments already in use (e.g. rail vs. railway, transport vs. transportation vs. traffic).

Comments by Article:

- Article 1:
 - In the first sentence replace the words 'basic concepts' by '**definitions**'.
 - A definition of luggage is missing.
 - (a), (h): What is the difference between 'baggage' and 'cargo' – the title says 'baggage cargo'?
 - (b): It is not clear if the description is for the 'infrastructure' or 'rail transport infrastructure' – one definition should be used and if it is within the meaning of Article 1(i) and Article 11 (b).
 - (d): Replace '... by train on a valid travel document...' by '....by train **with** a valid travel document....' Moreover, the passenger is in definition (e) also as 'sender'.

- (e): Replace '..., a **given by sender** luggage....' by '**passenger's** luggage...'; add the words '**a railway station of**' before the words 'origin' and 'destination'.
- (f): Definition of 'railway checkpoint' should be improved or changed to previous version of 'rail border crossing' defined in Article 1(f) of document ECE/TRANS/WP.30/20155/22. Attention should be paid to definition of 'border (interchange) station' stated in Article 2, Annex 9, Harmonization Convention.
- (g): The words '...with him...' seem to be redundant. The words '...without payment...' should be improved (baggage included in the price of the travel ticket?). The words '...the safety relies on the passenger...' is not clear within the meaning of the definition and should be better specified.
- (h): See comments to (a), (h). The word 'cargo' is not used in the text separately from 'baggage'.
- (k): The word 'special control' is not used further in the text. Perhaps this definition should stand as '**State control**'.
- Article 2: The words 'in international rail (railway) traffic' shall be added in the first sentence for better clarification of the aim of this draft Convention. Perhaps also the word 'objectives' should be mentioned in this sentence as used in Article 3(1). In (d) the customs bodies are mentioned as performing the state control on the borders. However, in the definition of special (state) control (Article 1(k)) the customs services are not mentioned.
- Article 4:
 - (1) goes far beyond the objectives of the draft Convention and may open the door for actions related to the EU competence, e. g. technical or safety aspects of rail operations. This should be limited to the objectives of the draft Convention.
 - (2) mentions 'the technology of automatic change of width of the wheel span depending on the gauge used'. This might be problematic since requirements for variable gauge wheel sets are described in COM Regulation No 1302/2014 and is subject to the EU competence. This Article shall be limited to the cross-border procedures and we propose the following change:

The Parties shall endeavour to use international standards, new technologies ~~in the field of railway transport, in particular, the technology of automatic change of width of the wheel span depending on the gauge used,~~ and best practices to improve the performance of rail crossing checkpoints and facilitate ongoing procedures in ~~all areas connected with the international railway operations~~ crossing of borders in international railway transport.
- Article 5:
 - (1) This paragraph is not in line with the definition of 'special (state) control' provided in Article 1(l).

- (2) (a) Wording 'including interchanging cars or when car's trucks change the width automatically when changing the gauge' is redundant.
- Article 6: The wording 'concerted action' shall be improved. In the last paragraph the words 'taking into account the possibility of effective State control' shall be added.
- Article 7 (2): Duties of the infrastructural managers shall be contained in the national legislation of the Party concerned. The meaning of this paragraph within the international context should be clarified.
- Article 9: This states that the authorised employees of state control bodies are exempted from passport formalities and the provision of the official documents authorizing them to carry out state control is sufficient to authenticate their identity. This equals to creating new ID documents for which there is no added value (indeed so far there are no specific rules for the border checks of the staff on the trains, except for stamping – as railway staff is exempted from the stamping, there is no added value of the introduction of a new identification document). In the case here Union law only recognises a (limited) number of valid travel documents and does not intend to add the above ones.
- Article 10: This Article contains similar provisions of Article 3 of Annex 9 of the Harmonization Convention – the alignment should be further studied.
- Article 11: This Article contains similar provisions of Article 3 of Annex 1 and Article 4 of Annex 9 of the Harmonization Convention – the alignment should be further studied.
- Article 12 is redundant. It is up to each Party to establish the rules on identification/uniforms of state control officials.
- Article 13: Duties of the carriers shall be contained in the national legislation of the Party concerned. The meaning of this paragraph within the international context should be clarified.

Insert in Article 13(1) provisions 'subject to/taking into account the constraints resulting from the applicable national legal provisions or international agreements binding in a Contracting Party'.

- Articles 14 and 15 seem to contradict each other and are not clearly in line with Article 5(2). The text shall be clarified and improved.

On Articles 14 and 15:

- we propose to complement Art. 14, last paragraph, as follows “When the State control on the territory of one Party is performed by the other Party’s bodies of State control or between the border crossing checkpoints, the questions of (...),

- we propose to reformulate Art. 15.1 as follows: “Where the use of special forms and methods of control established by the legislation of the Parties is necessary, such control may be carried out (...),

- With the aim of facilitation and decreasing of border controls’ time, considering the fact that in most cases the detected contraband is hidden in the

construction elements of the wagons, we propose to add the following provision, possibly in Art. 15: “In order to ensure the passengers’ security, the Carrier is obliged to utilize in the international transport such wagons, where unauthorized interference in their construction is not possible, and to take all possible measures to prevent the interference of passengers in the wagons’ construction. In case such interference is detected, the staff of the Carrier is obliged to give information to the State control officials on the location of such interference and on the person involved.”

- Article 16(1): This paragraph states that the performance of controls shall be established in the bilateral agreements; therefore it is not necessary to mention how the control shall be done. We propose to either delete the words: ‘... sequentially by bodies of State control of the Party of exit, then by bodies of State control of the Party of entrance,...’) or make a reference to other sequence of performance of the controls which might be defined in bilateral agreements as mentioned in (3).
- Article 17: This Article is similar to Article 7 of Annex 9 of the Harmonization Convention. Alignment should be further studied.
- Article 18: This Article relates to Article 5(2)(a), the link between these Articles should be mentioned (reference). The need to specify a zone (2) in the railway checkpoint and what this zone shall/might include (3) should be further studied. Moreover this Article should be aligned to the definition of railway checkpoint stated in Article 1(f) – see also comments above.
- Article 19: This Article relates to Article 5(2)(b), the link between these Articles should be mentioned (reference). It is not clear where the cases defined are the conditions to be met if the control is made during the journey between the railway checkpoints in the train.
- Article 20: This Article relates to Article 5(2)(c), the link between these Articles should be mentioned (reference). It sets 2 conditions to be met: (1) the duration of non-stop run of train before or after the railway checkpoint is sufficient; (2) control is carried out on the territory of only one Party. However, the possibility to carry out the control in the territory of the other Party should be according to Article 16 (2) established on the basis of a bilateral agreement. Further clarification is needed.
- Article 21: Rules on signature are missing. The conditions on the entry into force should be further studied (2).
- Article 22: The paragraphs should be numbered. This article will need a further review by the EU.
- Articles 23-26 related to the procedures of amending the Convention, settlement of disputes, denunciation need further study as well as possible procedure for termination and administration of the Convention.