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International Convention on the Harmonization of

Frontier Controls of Goods, 1982 (Harmonization Convention)

Proposals on a new Annex 10 on seaports

Note by the secretariat

I. Background and mandate

1. At its previous session, the Working Party considered document ECE/TRANS/WP.30/2016/16, containing a consolidated draft text of a new Annex 10 to the Harmonization Convention on seaports, with various comments by Ukraine, the European Commission, the Eurasian Economic Commission (EEC) and the Federation of National Associations of Ship Brokers and Agents (FONASBA) and a proposal by Azerbaijan to amend Article 2, paragraph 1 of the draft Annex. The delegations of the Russian Federation and of the European Union (EU) challenged the legal and practical merits of the draft, in its current state as well as in general, with particular reference to the International Maritime Organization Convention on the Facilitation of International Maritime Traffic (FAL Convention) which already covers some of the issues of controls at seaports. In conclusion, the Working Party decided to revisit document ECE/TRANS/WP.30/2016/16 at the current session. The secretariat was, inter alia, requested to review the relevance of the FAL Convention in the context of the current discussions.

2. The purpose of this document is to provide the Working Party a summary overview of the scope and provisions of the FAL Convention in order to establish its relevance for further discussions on Annex 10.

II. History and scope of the FAL Convention

3. The Convention on the Facilitation of Maritime Traffic (FAL Convention) was adopted by the International Conference on Facilitation of Maritime Travel and Transport on 9 April 1965 and entered into force on 5 March 1967.

4. Since its entry into force, the FAL Convention has been amended seven times, lastly in 2010. An eighth amendment had been adopted in 2016 by the FAL Committee, with expected entry into force as of 1 January 2018.

5. The main purpose of the FAL Convention is to facilitate transport by simplifying and minimizing the formalities, documentary requirements and procedures by public authorities on the arrival, stay and departure of ships engaged on international voyages. It was originally developed to meet growing international concern about the excessive documentation required for commercial shipping.

6. The FAL Convention facilitates maritime traffic by providing a standardized documentation system developed by IMO. Further to the main body, which lays out the generic scope and procedural aspects. The Annex of the Convention contains rules for simplifying formalities, documentary requirements and procedures on arrival, stay and departure of ships in the form of a set of standards and recommended practices.

III. Provisions of the FAL Convention

7. The main body of the Convention consists of sixteen articles addressing (in a nutshell):

Article I: Consent of Contracting Parties to adopt appropriate measures to facilitate international maritime traffic;

Article II: Consent of Contracting Parties to apply measure in accordance with the provisions of the Convention;

Article III: Consent of Contracting Parties to seek highest degree of uniformity in formalities, documentary requirements and procedures;

Article IV: Consent of Contracting Parties to cooperate in IMO;

Article V: No restriction on the application of greater facilities or temporary measures (for the sake of public order, security or health);

Article VI: Definition of standards and recommended practices;

Article VII: Amendment procedure;

Article VIII: Obligation of Contracting Parties to inform the Secretary-General of IMO in case they fail to comply with any standard;

Article IX: Review Conference;

Article X: Signature and accession;

Article XI: Entry into force;

Article XII: Denunciation;

Article XIII: Extension of territorial application;

Article XIV: Information by the Secretary-General;

Article XV: Deposition of the Convention;

Article XVI: Authentic languages.

IV. Annex to the FAL Convention

8. The Annex consists of seven sections:

Section 1: Definitions and general provisions; possibly applicable definitions: cargo; crew member; customs clearance; customs release; document; manifest; port; public authorities; transport document.

Section 2: Arrival, stay and departure of the ship; this section contains provisions on the formalities required by public authorities of ship owners on the arrival, stay and departure of ship (not precluding the presentation and inspection of certificates and other papers).

Section 3: Arrival, stay and departure of persons; this section contains provisions on the formalities required by public authorities from crew and passengers on the arrival or departure of a ship.

Section 4: Stowaways; this section contains provisions on cooperation between all parties to prevent stowaway incidents and to resolve stowaway cases.

Section 5: Arrival, stay and departure of cargo and other articles; this section contains provisions on the formalities required by public authorities from the ship owner, his agent or the master of the ship.

Section 6: Public health and quarantine, including sanitary measures for animals and plants; this section contains standards and recommended practices.

Section 7: Miscellaneous provisions: bonds and other forms of security; services at ports; emergency assistance; national facilitation committees.

V. Scope and structure of Annex 10

9. The scope of Annex 10 is to define the steps that need to be taken to facilitate the crossing of borders for international maritime freight (Article 1, para. 1).

Preliminary observations by the secretariat: Both legal instruments aim at the facilitation of formalities and procedures at ports. Whereas the FAL Convention covers both passenger and cargo traffic (international maritime traffic), Annex 10, as part of the Harmonization Convention, limits itself to cargo only (international maritime freight). This is reflected in the FAL Convention by the desire “to facilitate maritime traffic by simplifying and reducing to a minimum the formalities, documentary requirements and procedures on the arrival, stay and departure of ships engaged in international voyages”.

10. Article 1, paragraph 2 (+alternative proposal by EEC) contains a call for cooperation by Contracting Parties in the field of maritime transport.

Preliminary observations by the secretariat: Article 4 of the Harmonization Convention stipulates a generic call on Contracting Parties to coordinate the intervention of customs services and other control services. Annex 8 does not contain a mirror provision for road transport, but Annex 9 (Article 1) does. From its side, Article II of the FAL Convention contains a general call for cooperation between Contracting Governments in the application of the provisions of the Convention. There does not seem to be a need to repeat in Annex 10 this provision from the body of the Convention.

11. Article 1, paragraph 3, stipulating the application of the Annex without prejudice to applicable international standards and agreements.

Preliminary observations by the secretariat: Whereas, on the one hand, a corresponding clause does not appear in Annex 8 or 9, such generic clause is contained in Article 14 of the Harmonization Convention. The FAL Convention does not contain any such similar clause. There does not seem to be a need to repeat in Annex 10 this provision from the body of the Convention.

12. Article 2 of Annex 10 deals with the facilitation of visa procedures for maritime crews.

Preliminary observations by the secretariat: Annexes 8 and 9 of the Harmonization Convention contain similar clauses. Standard 3.45 of the FAL Convention stipulates that "Crew members shall not be required to hold a visa for the purpose of shore leave." This standard seems to go beyond the provision of Annex 10, Article 2. In view of their fundamental divergence, it seems more practical to apply, in this case, to the FAL Convention rather than repeating a clause for road and rail from other Annexes of the Harmonization Convention.

13. Article 3 establishes a mutual information system on border control requirements and situations in ports, deals with the transfer of control procedures to departure or destination places and provides instructions for urgent consignments and perishable foodstuffs.

Preliminary observations by the secretariat: This Article is a transposition of Annex 8, Article 3. As noted by several parties, the reference in the draft to Article 7 of the Harmonization Convention is incorrect, as this provision refers to road transport only. It further contains various aspects that are also covered by the FAL Convention: Recommended Practice 5.1, minimizing waiting times; Standard 5.7, dealing with clearing urgent consignments, perishable foodstuffs and live animals; Section 6: dedicated to sanitary and veterinary controls, covered by Annexes 2-4 of the Harmonization Convention. The use of advance information exchange, as stipulated by Article 3, para. 4 of Annex 10, is also addressed by Standard C 1.4 and Recommended Practice 5.14. Thus, it seems that the added value of this provision over the FAL Convention is limited.

14. Article 4 of Annex 10 deals with personnel, facilities and equipment that should, to the extent possible, be available at ports.

Preliminary observations by the secretariat: This issue is equally being addressed by Recommended Practices 3.11, 5.1-5.3 of the FAL Convention. Thus, it seems that the added value of this provision over the FAL Convention is limited.

15. Annex 10, Article 5 on reciprocal recognition of controls and the granting of greater facilities.

Preliminary observations by the secretariat: These issues are equally covered by Article V of the FAL Convention, Standard 5.10 and Recommended Practice 5.10.1. The provision of paragraph Annex 10, Article 5, paragraph 3, to limit inspections of goods in transit is reflected, more generally, in Standard 5.10 and Recommended Practice 5.14.1. Thus, it seems that the added value of this provision over the FAL Convention is limited.

16. Annex 10, Article 6 on time-limits.

Preliminary observations by the secretariat: This provision is equally covered by Recommended Practice 5.1 of the FAL Convention. Thus, it seems that the added value of this provision over the FAL Convention is limited.

17. Annex 10, Article 7, documentation.

Preliminary observations by the secretariat: As indicated by FONASBA, Section 2 of the FAL Convention contains strict instructions with regard to the type and number of documents that should be required for arrival of departure of ships. Standard 2.1. enumerates the documents: General Declaration, Cargo Declaration, Ship's Stores Declaration, Crew's Effects Declaration, Crew List, Passenger List, Dangerous Goods Manifest, Document required under the Universal Postal Convention for mail and the Maritime Declaration of Health. Except for the UPC document, all other documents are specified in Appendix 1 (IMO FAL forms 1-7). EU points out that the provision of Article 8 is too generic to be part of Annex 10 and points at the existence of Article 9 of the Convention on documentation. The issue of electronic information exchange systems is dealt with by Annex 1, Part C (1.3bis-1.7.1.). The use of advance cargo information is covered by Standard C.A2.1.2 and Recommended Practices 21.3, 2.1.3bis, 2.1.4. and 2.1.5.. Thus, it seems that the added value of this provision over the FAL Convention is limited.

VI. Preliminary conclusions by the secretariat

18. First of all, it should be stated that the FAL Convention is a maritime transport related legal instruments, which requires specific expert knowledge in order to proceed to an in-depth analysis of its relevance and potential contribution to draft Annex 10 of the Harmonization Convention. However, without being exhaustive, several preliminary can nevertheless be drawn:

(a) The purpose of the FAL Convention overlaps with Annex 10, as they both aim at facilitating international maritime traffic. However, the FAL Convention is more comprehensive as it covers procedures for both cargo and passenger traffic whereas Annex 10 is limited to frontier controls of goods;

(b) With regard to cargo traffic, a comparison between the provisions of the two texts seem to reveal a more comprehensive and ambitious treatment of border formalities, documents and procedures by the FAL Convention. Thus, the added value of the provisions of Annex 10 over the FAL Convention seems to be limited;

(c) In view of the many overlapping issues, a generic reference in Annex 10 to the FAL Convention could be considered. However, considering that the FAL Convention is subject to regular amendments, referring to a 'living' legal instrument is risky and may lead to undesired effects in the future;

(d) The text of the FAL Convention is not publicly available, but needs to be purchased;

(e) Despite the textual or substantial similarities, the full impact of FAL provisions on draft Annex 10 cannot be assessed without further analysing their scope and meaning within the context of the FAL Convention itself, requiring an in-depth study by an expert in the field.

VII. Considerations by the Working Party

19. The Working Party is invited to consider the preliminary observations and conclusions by the secretariat. Within the context of its discussions, the Working Party may wish to invite IMO to attend one of its future sessions to provide more information on the FAL Convention. Against this background, the Working Party may also wish to take note of the invitation by the IMO secretariat to submit the text of Annex 10 to the IMO FAL Committee for consideration.