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## Economic Commission for Europe

### Inland Transport Committee

#### Working Party on Customs Questions affecting Transport

##### 129th session

Geneva, 3 – 7 October 2011

Item 9 (b) (ii) of the provisional agenda

**Customs Convention on the International Transport of Goods**

**under Cover of TIR Carnets (TIR Convention, 1975): revision of the Convention**

### Amendment proposals for the Convention

#### Note by the secretariat\*

#### I. Background and mandate

1. The Working Party, at its 121st session, considered the outstanding amendment proposals to Annex 9 (part I and a new part III), as laid down in document ECE/TRANS/WP.30/2009/5. The Working Party endorsed in principle the proposals by European Union (EU) regarding Annex 9, part I, subject to the deletion of paragraph 3 (vi) and of the comment thereto.

2. The Working Party also had a first exchange of views with respect to the authorization and duties of an international organization, as proposed in a new part III of Annex 9. In particular, the Working Party discussed whether paragraph 1 (c) of part III should be redrafted to incorporate a mandate by the TIR Administrative Committee (AC.2) to UNECE to sign an agreement with an international organization which would include the acceptance of that international organization of its duties as set out in paragraph 2. The Working Party decided to revert to this issue at a future session. Having proposed other modifications to the text, the Working Party requested the secretariat to revise the document accordingly and to align, where necessary, the content with the already existing provisions of the TIR Convention. With a view to facilitating discussions at its next session, the Working Party invited delegations to submit to the secretariat not later than on 15 March 2009 comments or proposals to document ECE/TRANS/WP.30/2009/5 (ECE/TRANS/WP.30/242, para. 32).

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\* The present document was submitted late due to resources constraints.

3. At its 122nd session, the Working Party continued its consideration of the outstanding amendment proposals as contained in document ECE/TRANS/WP.30/2009/5 and endorsed in principle the proposals by EU regarding Annex 9, a new part III, subject to the deletion of paragraphs 2 (xiv) and (xv) and a few other modifications. The Working Party also discussed how the criterion of sound financial standing of the international guaranteeing system, as set out in para. 1 (a) of the above document, could be verified. It was suggested that audits by an independent external auditor and/or by the United Nations Office of Internal Oversight Services (OIOS) or the United Nations Board of Auditors (BOA) be used for that purpose. The secretariat was requested to consult with the competent United Nations services and prepare proposals for consideration at the next session. The Working Party also invited delegations to submit to the secretariat not later than 15 July 2009 further comments or proposals to document ECE/TRANS/WP.30/2009/5.

4. At its 123rd session, the Working Party recalled its request to the secretariat to consult with the competent United Nations services and prepare proposals for audit requirements, to be included into a new Annex 9, Part III, and noted with regret that, due to ongoing internal consultations, the secretariat had not managed to finalize such proposals. At the same time, the Working Party recognized that only well-balanced and duly formulated audit requirements would provide the TIR system with the required transparency. Thus, it requested the secretariat to continue its consultations, on the understanding that an official document in all official languages would be available at its next session for consideration (ECE/TRANS/WP.30/246, para. 29).

5. In line with the above request, the secretariat, in consultation with the competent United Nations services, prepared this document which contains, in the Annex, proposals for a new Annex 9, Part III of the Convention, for consideration by the Working Party.

6. At its 124th session, the Working Party held its first deliberations on document ECE/TRANS/WP.30/2010/4, containing proposals for the introduction of a new Annex 9, Part III of the Convention on the authorization of an international organization to take on the responsibility for the effective organization and functioning of an international guarantee system and to print and distribute TIR Carnets. The Working Party took particular note of the audit provisions which had been introduced in the text in consultation with the competent United Nations services. The representative of the International Road Transport Union (IRU) pointed out that the issues of financial responsibility and confidentiality should be addressed in the framework of applicable national law. He also noted that the new amendment proposals would provide for numerous audits of an international organization and might create difficulties in the functioning of the guarantee system. In reply to concerns expressed by the IRU, the secretariat informed that the purpose of the newly introduced provisions was to ensure that the audit requirements encompass the full scope of the authorization granted by the Administrative Committee. The Working Party expressed its general support to the proposed text, but requested the secretariat to provide, at its next session, more details with regard to which persons other than the United Nations Office of Internal Oversight Services (OIOS) and the United Nations Board of Auditors (BOA) the international organization should allow access to its relevant records and accounts. The Working Party looked forward to the availability at the next session of the document in the three working languages in order to continue its discussions and, possibly, reach a final decision (ECE/TRANS/WP.30/248, para. 25).

7. At its 125th session, the Working Party considered updated amendment proposals for the introduction of a new Annex 9, Part III of the Convention on the organization of an international organization (ECE/TRANS/WP.30/2010/4/Rev.1). Following the request of WP.30 at its previous session, the secretariat clarified which persons others than OIOS and BOA could be authorized by the United Nations to audit an international organization, as

mentioned in para. 3 (p) of the Annex. According to information provided by OIOS, the Secretary-General of the United Nations, the General Assembly or the UNECE Executive Secretary can nominate, in case of need, a special rapporteur to investigate an issue of possible concern and to report back to the nominating body. For example, this is common practice for human right issues. In addition, this phrase is needed to avoid amending United Nations legal instruments in case of changes in the United Nations Rules and Regulations concerning audit.

8. The Working Party felt that subparagraph 1 (c) of the Annex should become a new item of paragraph 3. The secretariat was requested to update the document accordingly and to correct references where required (ECE/TRANS/WP.30/250, paras. 20-22).

9. At its 126th session, 30, the Working Party, on the basis of revised document ECE/TRANS/WP.30/2010/4/Rev.2 by the secretariat, considered amendment proposals for the introduction of a new Annex 9, Part III of the Convention on the authorization of an international organization and focused its attention on items (o), (p) and (q) which introduce audit requirements. In line with the request by WP.30 at the previous session (ECE/TRANS/WP.30/250, para. 22), the secretariat informed the Working Party that the issue of confidentiality is duly reflected in the International Standards on Auditing<sup>1</sup> and in the Code of Ethics for Professional Accountants.<sup>2</sup>

10. The Working Party took note of Informal document No. 6 (2010) in which IRU reiterated its concerns with regard to the new audit provisions, such as unclear background, lack of justification, possible breach of the Swiss law, number of audits and the confidentiality of audit reports, and proposed to adopt the new Annex 9, Part III without items (o), (p) and (q). IRU also pointed out that it already fulfils numerous obligations by virtue of the UNECE-IRU agreement.

11. A number of delegations were of the view that provisions (o), (p) and (q) aimed at ensuring good governance and transparency in the TIR system and, thus, cannot be spared. They argued that audits would be a logical consequence of the authorization granted to an international organization, as the Contracting Parties should have the right to verify the fulfilment of the conditions of the authorization.

12. Some other delegations expressed concerns that the new provisions seem to impose numerous audits that could prevent IRU from the proper accomplishment of its tasks and, therefore, could have a negative impact on transport operators. In reply to the question whether the United Nations auditors, as mentioned under item (p), have the right to audit an independent international organization, the secretariat clarified that the United Nations auditors cannot perform such audits without the consent of the international organization. A few delegations felt that the annual external audits of IRU, conducted in line with the Swiss law, would be sufficient to ensure the necessary transparency and that technical, legal and financial implications of the new audit provisions should be studied further. The delegation of Kyrgyzstan was of the view that the present wording of Article 6.2 bis is sufficient for its country.

13. The Working Party realized that it has at least the following three options concerning the underlying proposals: (i) to adopt the text as it stands, including (o), (p) and (q); (ii) to adopt the text without (p) and (iii) to adopt the text without (o), (p) and (q). Being unable to take a final decision at the present session, WP.30 decided to come back to this issue at the next session (ECE/TRANS/WP.30/252, paras. 30–34).

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<sup>1</sup> [web.ifac.org/clarity-center/the-clarified-standards](http://web.ifac.org/clarity-center/the-clarified-standards)

<sup>2</sup> [web.ifac.org/publications/international-ethics-standards-board-for-accountants/code-of-ethics#2010-handbook-of-the-code-o](http://web.ifac.org/publications/international-ethics-standards-board-for-accountants/code-of-ethics#2010-handbook-of-the-code-o)

14. At its 127th-session, The Working Party continued its discussions on items (o), (p) and (q) of the proposed new Annex 9, Part III (ECE/TRANS/WP.30/2010/4/Rev.2) which introduce audit requirements for an authorized international organization. WP.30 noted that, in general, the different opinions expressed at the previous session (ECE/TRANS/WP.30/252, paras. 30–34) remained unreconciled.

15. The delegations of Georgia, Kazakhstan and Kyrgyzstan saw no need in the introduction of audit provisions (o), (p) and (q). They stated that they fully trust IRU, as this organization has a long standing reputation in the TIR system, provides transparency and is regularly audited by the world's leading auditing companies according to Swiss law.

16. The delegations of Belarus, Germany, Netherlands, Russian Federation and the European Union pointed out that the underlying audit provisions are not linked to the issue of trust to IRU, but aim at ensuring transparency and good governance and establishing a solid legal basis that would allow the Contracting Parties to verify, in case of need, how an authorized international organization, not necessarily IRU, uses the privileges and financial tools granted by the authorization.

17. The delegation of Iran (Islamic Republic of) supported transparency and international cooperation, but reiterated its reservation that the adoption of (o), (p) and (q) is premature until the legal and financial implications of the new audit provisions have been studied in detail.

18. IRU reiterated its previous proposal to adopt Annex 9, Part III without (o), (p) and (q). IRU also reconfirmed that it is not against audits as, by virtue of Swiss law, its accounts are in any case subject to external audits, currently by PriceWaterhouseCoopers. Finally, IRU stated that more clarity is needed, notably on the issue of confidentiality of audit results and what to do in case there are inconsistencies between its external audit and the audit by the competent United Nations services.

19. As a possible compromise, some delegations proposed to keep (o) and (q), but to delete either the whole item (p) or, at least, the reference to "other persons duly authorized by the United Nations" therein. It was also suggested that item (r) should be complemented with a deadline for the conclusion of a written agreement.

20. Finally, the Working Party stressed the need to make progress in this area and called upon all parties involved to find a compromise wording. As a first step, the secretariat was requested to prepare a document which would summarize and analyze the pros and cons of the introduction of audit provisions. The delegations were invited to provide the secretariat with their views and/or comments by 15 March 2011 at the latest. Armenia as well as some other delegations proposed that a small drafting group with the participation of the secretariat, IRU, EU and other volunteers be established to prepare a compromise proposal for consideration already at the next session of WP.30 (ECE/TRANS/WP.30/254, paras 27–33).

21. At its 128th session, the Working Party was informed that, responding to its request of the previous session (ECE/TRANS/WP.30/254, para. 33), the following countries had provided their contributions regarding items (o), (p) and (q) of the proposed new Annex 9, Part III (ECE/TRANS/WP.30/2010/4/Rev.2) which introduces audit requirements for an authorized international organization: Bosnia and Herzegovina, Iran (Islamic Republic of), Kazakhstan, Russian Federation, Turkey and Ukraine. These contributions, as well as some further considerations, had been included by the secretariat in document ECE/TRANS/WP.30/2011/6.

22. Following an exchange of views on the above document, WP.30 noted that some contributors proposed alternative texts for (o), (p) and (q), while some others suggested that these items be deleted. The Working Party first felt that, under these circumstances, it does not seem feasible to reach a compromise wording, for example, by means of a drafting group. However, various delegations declared that they are committed to seeking a consensus and ready to adjust their positions, taking into account document ECE/TRANS/WP.30/2011/6 and new arguments raised during the discussion. The Working Party welcomed these statements and requested the secretariat to prepare, for consideration at its next session, a consolidated document with various alternatives for (o), (p) and (q). The secretariat would also include in this document suggestions for further improvement of a few other paragraphs of the proposed new Annex 9, Part III (ECE/TRANS/WP.30/256, paras. 26–27).

23. In line with the above, the secretariat prepared document ECE/TRANS/WP.30/2010/4/Rev.3 for consideration by the Working Party. Changes with regard to document ECE/TRANS/WP.30/2010/4/Rev.2 are in bold underlined, deletions are in ~~striketrough~~. This document takes account of proposals submitted by various Contracting Parties, as contained in document ECE/TRANS/WP.30/2011/6.

## Annex<sup>1</sup>

### Article 6.2bis

**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.<sup>2</sup>**

### Annex 9, Part III

#### **Authorization of an international organization, as referred to in Article 1 (r),<sup>3</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 6.2**bis** of the Convention, by the Administrative Committee to take on the responsibility for the effective organization 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 submission of consolidated financial statements duly audited by internationally recognized independent auditors;

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

~~2. The Administrative Committee shall have the right to revoke the authorization granted in accordance with Article 6.2bis in case of non-compliance with these conditions and requirements. 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.<sup>4</sup>~~

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<sup>1</sup> ~~The modifications to document ECE/TRANS/WP.30/2010/4/Rev.1 are marked in strikethrough for deleted and in **bold** for new text.~~

<sup>2</sup> The secretariat proposes to reinsert this provision, which has been deleted from the package of amendment proposals contained in document ECE/TRANS/WP.30/2009/4-ECE/TRANS/WP.30/AC.2/2009/3 and Corrs. 1, 2 and 3 thereto following a decision by the Administrative Committee at its forty-eighth session (ECE/TRANS/WP.30/AC.2/99, para. 21).

<sup>3</sup> At its 121st session, WP.30 endorsed amendment proposals, including a proposal to introduce a new Article 1 (r) to the Convention, to read “the term “international organization” shall mean an organization authorized by the Administrative Committee to take on responsibility for the effective organization and functioning of an international guarantee system.”

<sup>4</sup> **Moved to item 5 below.**

2. ~~Pursuant to~~ ~~Under the conditions and requirements of~~ the authorization, the international organization shall<sup>5</sup>:

(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, at the request of the Administrative Committee for the TIR Convention or the TIR Executive Board, full and complete information on the functioning of the TIR system<sup>6</sup>;~~

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

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

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

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

(l) 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;

(m) 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;

(n) 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;

<sup>5</sup> The provisions of Article 3 are based on the international organization's responsibilities as contained in the UNECE/IRU agreement, latest version being ECE/TRANS/WP.30/AC.2/2007/14 but which has been reworded and amended by the secretariat in order to reflect their legal status within the context of the TIR Convention as an international legal instrument.

<sup>6</sup> **Proposal by the secretariat to merge subparagraphs (d) and (f). If accepted by the Working Party, subparagraphs (g)–(r) will have to be renumbered as (f)–(q).** ~~The Working Party may wish to clarify the difference between subparagraphs (d) and (f) of this Article, if any.~~

[(o) maintain separate records and accounts containing information and documentation which pertain to the organization and functioning of an international guarantee system and the printing and distribution of TIR Carnets;]<sup>7</sup>

[(p) allow access to the above records and accounts to the United Nations Office of Internal Oversight Services (OIOS), the United Nations Board of Auditors (BOA) ~~or other persons duly authorized by the United Nations~~<sup>8</sup> and at all times facilitate inspections and audits performed by them;]<sup>9</sup>

**[(p) allow access to the above records and accounts to the United Nations Office of Internal Oversight Services (OIOS), the United Nations Board of Auditors (BOA) and, at all times, facilitate inspections and audits performed by them on the basis of guidelines and terms of reference established by the TIR Administrative Committee;]<sup>10</sup>**

[(q) engage an independent external auditor to conduct annual audits of the above records and accounts. Guidelines and terms of reference for the external audit shall be adopted by the Administrative Committee. The external audit shall be performed in accordance with International Standards on Auditing (ISA) and shall result in an annual audit report and a management letter, issued by the independent external auditor to the Administrative Committee, with copies sent directly to the Executive Secretary of the United Nations Economic Commission for Europe and the international organization concerned;]

**[(q) engage an independent external auditor to conduct annual audits of the above records and accounts. The external audit shall result in an annual audit report to the Administrative Committee to confirm that the accounts of the international organization comply with applicable national legislation;]<sup>11</sup>**

(r) conclude, **not less than two months before the provisional date of entry into force or renewal of the authorization granted in accordance with Article 6.2 bis of the Convention**<sup>12</sup>, 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<sup>13</sup> of the Convention, 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**

<sup>7</sup> **Georgia, Kazakhstan, Kyrgyzstan, Iran propose to delete (o), (p) and (q). IRU supports this view.**

<sup>8</sup> **Deletion proposed by the Russian Federation, Turkey**

<sup>9</sup> **Ukraine proposes the deletion of (p)**

<sup>10</sup> **Alternative wording for (p) proposed by Russian Federation.**

<sup>11</sup> **Alternative wording for (q) proposed by Ukraine.**

<sup>12</sup> **Proposal by the secretariat**

<sup>13</sup> Reference to paragraph 4 subject to adoption of amendment proposals contained in document ECE/TRANS/TRANS/WP.30/AC.2/**2010/3 and Corr. 1 thereto.**



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.<sup>14</sup>

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.<sup>15</sup>

**U6.** 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>14</sup> The text of item 4 has been informally agreed between the secretariat and IRU.

<sup>15</sup> This paragraph was moved from former paragraph 2.