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**ECONOMIC COMMISSION FOR EUROPE**

INLAND TRANSPORT COMMITTEE

Working Party on Customs Questions affecting Transport

Ad hoc Expert Group on Phase III of the TIR Revision Process

**REPORT OF THE SECOND SESSION**

(15 and 16 November 2004)

**ATTENDANCE**

1. The Ad hoc Expert Group held its second session on 15 and 16 November 2004 in Geneva.
2. The session was attended by experts from the following Contracting Parties: Belarus; Finland; Germany; Greece; Netherlands; Russian Federation; Sweden; European Community (EC). Representatives of the International Road Transport Union (IRU) also participated.

**ADOPTION OF THE AGENDA**

Documentation: TRANS/WP.30/2004/37.

3. The Ad hoc Expert Group adopted the provisional agenda, prepared by the secretariat, in line with the mandate provided by the Working Party at its one-hundred-and-eighth session (TRANS/WP.30/216, paras. 50-56).

## **BACKGROUND AND MANDATE**

4. The Ad hoc Export Group took note of the mandate provided by the Working Party.

## **CONSIDERATION OF AMENDMENT PROPOSALS OF A STRATEGIC NATURE**

5. As mandated by the Working Party, the Ad hoc Expert Group considered the amendment proposals that it had identified as being of a strategic nature during its first session (TRANS/WP.30/204/32).

Article 6.2bis, proposals by the Chairman of WP.30, the European Community and the Russian Federation.

6. The Ad hoc Expert Group decided to recommend to the Working Party an alternative text for an Explanatory Note, possibly a Comment, to Article 6.2bis, as follows:

“The authorization granted in accordance with Article 6.2bis shall be reflected in a written agreement between the UNECE and the International Organization. [Without prejudice to the relevant provisions of the Convention] the agreement shall stipulate that the International Organization [shall fulfil the relevant provisions of the Convention,] shall respect the competences of the Contracting Parties to the Convention and shall comply with the decisions of the Administrative Committee and the requests of the TIR Executive Board. By signing the agreement the International Organization confirms that it accepts the responsibilities imposed by the authorization. The Agreement shall also apply to the responsibilities of the International Organization set out in Annex 8, Article 10 (b), in case the centralized printing and distribution of TIR Carnets is performed by the above-mentioned international organization. The Agreement shall be adopted by the Administrative Committee.”

7. The Ad hoc Expert Group recommended to the Working Party that the text be adopted at its one-hundred-and-ninth session as a comment that would have immediate effect. The Ad hoc Expert Group further recommended that, once considerations concerning other amendment proposals had come to an end, it should be reconsidered if further amendments to Article 6.2bis would be necessary, including, possibly, changing the Comment to an Explanatory Note.

8. The Russian Federation was of the view that the underlying text should be considered as an Explanatory Note to Article 6.2bis, rather than a comment. The Russian delegation also felt that, in the second sentence, the wording from the second square brackets should be kept.

9. In addition, the Ad hoc Expert Group decided to recommend to the Working Party that an Explanatory Note/Comment be added to Annex 8, Article 10 (b), as follows:

“The Agreement mentioned in the [Explanatory Note/Comment] to Article 6.2bis shall also apply to the responsibilities of the International Organization set out in (b) of this article, in case the centralized printing and distribution of TIR Carnets is performed by the above mentioned international organization.”

Article 8 (and 31), proposals by the Chairman of WP.30 and by the European Community and Article 11, proposals by the European Community and the Russian Federation

10. The Ad hoc Expert Group expressed the view that Articles 1, 6, 8 and 11 of the Convention should be considered together, taking account of their correlation.

**Article 8.1**

11. The Ad hoc Expert Group decided to recommend to the Working Party that a number of concepts relevant to the proper functioning of the Convention should needed to be defined, that the Convention needed to be amended with such new definitions and that terminological consistency should be ensured throughout the Convention. This includes concepts such as “issuing association/guaranteeing association”, “international organization”, “guarantee/surety”, etc.

**Article 8.2**

12. The Ad hoc Expert Group requested the secretariat to study the background of the paragraph and to report its findings to the Working Party. If the study of the secretariat would not provide any justification for keeping the paragraph, the Ad hoc Expert Group recommended that the paragraph be deleted.

### **Article 8.3**

13. The Ad hoc Expert Group decided to recommend to the Working Party that Explanatory Note 0.8.3, second sentence starting with “In case...” and ending with “...\$US 200,000:” be replaced, as follows:

“The following types of goods can not be transported under cover of TIR Carnet, given the extraordinarily high risk for fraud involved:

- (1)...idem
- (2)...idem
- (3)...idem
- (4)...idem
- (5)...idem”

14. The Ad hoc Expert Group also decided to recommend to the Working Party that the reference in the Explanatory Note to small quantities should be deleted.

15. Furthermore, bearing in mind the above recommendation, it recommended that the relevant parts of the Comment to Explanatory Note 0.8.3. be included in the Explanatory Note itself. It also recommended that the Working Party should consider if the Explanatory Note should be placed under another Article of the Convention, possibly Article 2 or 3.

16. Finally, it the Ad hoc Expert Group recommended that Annex 1, Version 2 of the model of the TIR Carnet be deleted.

### **Article 8.7**

17. The Ad hoc Expert Group decided to recommend to the Working Party that further discussions on the issue should be postponed until:

- the IRU has presented its views on the concept of guarantee/surety at the one-hundred-and-ninth session of the Working Party;
- the European Commission has presented a document at the next Ad hoc Expert Group meeting containing its initial ideas on the issue of guarantee and incurrence of a customs debt in accordance with Community law.

18. Nevertheless, the Ad hoc Expert Group recommended to the Working Party to move the provisions of Article 8.7 to be integrated into Article 11. The exact placement of the provisions should await the outcome of further discussions on Article 11.

19. Finally, the Ad hoc Expert Group was of the view that discussion of the term “so far as possible”, which is used in this article of the Convention as well as in other international legal instruments should be postponed pending the interpretation by the United Nations Office of Legal Affairs of the similar expression used in the context of the Temporary Importation Conventions, as it had been requested by the Working Party.

#### **Article 11**

20. The Ad hoc Expert Group decided to recommend to the Working Party that the provisions of Article 11 are considered in relation with the provisions of Article 8.

21. In this context, the delegation of the Russian Federation recalled its proposals as contained in TRANS/WP.30/2003/11, which aim at determining the main elements of the operation of the TIR guarantee chain linking the national associations, the International Organization and the insurers, which would bring the provisions of the Convention in line with the de facto situation for the settlement of Customs claims.

22. Other delegations expressed the view that, at this stage, the national guaranteeing association should remain the only counterpart for national Customs authorities.

#### Article 42bis, Proposal by the European Community

23. Based on explanations provided by the secretariat considering the historical and practical context in which the article was intended to be applied, i.e. the use of the TIR Carnet as referred to in Annex 9, part II, the Ad hoc Expert Group decided to recommend to the Working Party that further discussions of the issue should be considered as a technical matter and that the TIRExB could be invited to study the issue in further detail and report back to the Working Party. In this context, the Ad hoc Expert Group was of the view that the International Organization should also be mentioned in the text of the Article with a view to ensuring that the article reflects the full life cycle of the TIR Carnet.

#### Annex 8 and Article 13, proposals by Turkey

24. The Ad hoc Expert Group decided to defer further discussions on this issue until such time that new information would be available.

## **OTHER MATTERS**

25. Bearing in mind the above-mentioned conclusions, the Ad hoc Expert Group was of the view that, at least, one more session of the Group would be necessary to finalize the work and be able to present concrete proposals to the Working Party. Thus, the Ad hoc Expert Group decided to recommend to the Working Party that further sessions of the Ad hoc Expert Group could be convened and that the Group be mandated to draft specific amendment proposals for consideration by the Working Party.

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