



**Economic and Social
Council**

Distr.
GENERAL

TRANS/WP.30/GE.2/2005/9
31 October 2005

ENGLISH ONLY

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
(Fifth session, 10 and 11 November 2005, agenda item 3)

CONSIDERATIONS OF AMENDMENT PROPOSALS TO ARTICLE 11*

Transmitted by the Government of Finland

A. BACKGROUND

1. During last Ad hoc Group meeting held on 3 October 2005 the Chairman asked for possible proposals concerning document TRANS/WP.30/GE.2/2005/2 and its revised version made by the Ad hoc Group.

B. PROPOSED AND REVISED (3.10.2005) ARTICLE 11 PAR. 1. (C)

When payment of sums mentioned in article 8, paragraph 1, becomes due, have required payment from the person or the persons directly liable before making a claim against the guaranteeing association.

Explanatory Note to Article 11 par. 1 (c)

Measures to be taken by the competent authorities in order to require payment from the person or persons directly liable shall include at least transmission of the claim for payment to the TIR Carnet holder.

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C. FINNISH PROPOSAL FOR ARTICLE 11 PAR.1. (C)

When payment of sums mentioned in article 8, paragraph 1, becomes due, have, prior to filing a claim against the guaranteeing association, at least transmitted the claim for payment to the TIR Carnet holder.

D. JUSTIFICATION OF THE PROPOSAL

2. Finland considers that its proposal corresponds to the present legal minimum requirements set forth by the competent authorities. It does not consider this would give a wrong signal, as it is provided that the competent authorities should *at least* transmit the claim for payment. Recovery procedures e.g. against person(s) directly liable other than TIR Carnet holder are a national matter, but perhaps a description of best practices in this area could be given, if needed.

3. In Finland, the so-called good recovery practice requires that creditors try to recover money from all debtors prior to demanding money from a third party, i. e. a guarantor. Also EC's own resource system requires Member States to make all recovery procedures against all possible debtors. This has relevance in the situations where a TIR guarantee does not cover the whole Customs debt but, as mentioned above, the national good recovery practice requires that Finnish authorities should anyway try to recover the debt from all debtors. In a situation where it seems obvious to the Finnish authorities that debtors do not have enough assets to pay the whole debt, the recovery procedures can be launched and payment from the guarantor required before the authorities have received any official results e.g. from recovery assistance given by another Member State (respecting the three months' period provided in Article 11.2). In this way, the amount of late payment interest is minimized. The previously mentioned procedure shows that national recovery procedures are complicated matters to be accurately included in the TIR Convention, but they could be included in the best practices part of the TIR handbook, if needed.

E. PROPOSED ANNEX 9 PART III, ARTICLE 2 SUBPARA. 1:

to provide the Contracting Parties of the TIR Convention via the national associations affiliated to it with certified copies of the global guarantee contract and proof of guarantee coverage;

F. FINNISH PROPOSAL TO ANNEX 9 PART III, ARTICLE 2 SUBPARA. 1:

to provide the Contracting Parties of the TIR Convention via the national associations affiliated to it with certified copies of the global guarantee contract and proof of guarantee coverage, which amount is fixed in the Agreement between UNECE and the IRU;

G. JUSTIFICATION OF THE PROPOSAL

4. Finland considers that such a basic matter as the amount of the global guarantee should be mentioned in the Agreement and as well as in Annex 9 to the proposed new Part III. It also considers that it would be useful if, in the future, WP.30 members could get statistics about how many TIR Carnets are in use at the same time during different periods e.g. week 1,2,3,4,5 etc. This should be possible at the latest when the eTIR system is in use. In this way, also Customs authorities could have a better understanding about guarantee coverage and its development during the years.
