



Economic and Social Council

Distr.: General
27 August 2010
English
Original: English and Russian

Economic Commission for Europe

Administrative Committee for the TIR Convention, 1975

Fiftieth session

Geneva, 30 September 2010

Item 6 (b) of the provisional agenda

Revision of the Convention:

Other proposals for amendments to the Convention

Other proposals for amendments to the Convention

Note by the secretariat*

1. At its forty-eighth session, the Committee considered the amendment proposals, as contained in document ECE/TRANS/WP.30/2009/4–ECE/TRANS/WP.30/AC.2/2009/3 and corrigenda 1-3 thereto, and noted that the European Community had finalized its internal approval procedures for their formal acceptance. The Committee decided to delete the proposals with regard to Article 6, paragraph 2bis and Annex 6, Explanatory Note 0.8.3, line 1-2 and requested the secretariat to issue a revised document for the next session (ECE/TRANS/WP.30/99, para. 21).

2. With reference to documents ECE/TRANS/WP.30/2008/13/Rev.1 and ECE/TRANS/WP.30/13/Rev.2, presenting all amendment proposals in a consolidated format and to paragraph 30 of the report of the Working Party on Customs Questions affecting Transport (WP.30) at its 120th session (ECE/TRANS/WP.30/240) and paragraph 21 of the report of the Committee at its forty-eighth session, containing final additions thereto, document ECE/TRANS/WP.30/AC.2/2010/3 contains in Annex I the precise wording of the legal amendment proposals, so far, in the presentation format prescribed by the United Nations. Amendment proposals involving comments are contained in Annex II.

3. At its 49th session, the Committee considered the updated amendment proposals as contained in document ECE/TRANS/WP.30/AC.2/2010/3 and delivered some remarks, both substantial and linguistic, on its contents. The Committee noted that some delegations had not yet completed their national approval procedures and were not in a position to formally adopt the proposals. Therefore, the Committee decided to revert to this issue at its next session upon the understanding that those countries would complete to their national coordination by that time. Meanwhile, the secretariat was requested to take on board the

* The present document has been submitted after the official document deadline due to resource constraints.

suggested modifications by means of issuing a corrigendum to the above document (ECE/TRANS/WP.30/AC.2/101, paragraph 24).

4. Taking into account the fact that the Committee, at its 49th session, also requested that future amendment proposals be preceded by a rationale (see ECE/TRANS/WP.30/AC.2/101, paragraph 22) the secretariat has taken the liberty of issuing a revision of document ECE/TRANS/WP.30/AC.2/2010/3 rather than a corrigendum for consideration by the Committee.

Annex I

Amendment proposals for adoption by the Administrative Committee for the TIR Convention

The Administrative Committee,

Having regard to the TIR Convention, 1975,

Whereas;

- (1) For reasons of consistency and clarity, the term “Customs authorities” needs to be replaced by either “competent authorities” or “Contracting Parties”, the term “surety” by “guarantee”¹ and the term “country” by “Contracting Party”.
- (2) The Convention, so far, lacks a definition of the term “international organization” as referred to in Article 6, Annex 8, Article 13 and Annex 9 of the Convention;
- (3) Article 8 of the Convention requires textual and logical clarification, including the transposition of the provision of Article 8, paragraph 7 and Explanatory Note 0.8.7. thereto to a new Article 11, paragraph 2 and an amended Explanatory Note 0.11.2 thereto.
- (4) The application of Article 10 benefits from further clarification that the production of a falsified certificate of termination is considered as a situation where no termination has taken place.
- (5) The procedure in case a TIR operation has not been discharged requires improvement in order to avoid disputes over the application of the different legal deadlines.
- (6) The existing provisions on methods to notify TIR Carnet holders and guaranteeing associations, as stipulated in Article 11, paragraph 1 and Explanatory Notes thereto, are no longer deemed to cover all current legal and administrative practices and, thus, benefit from further simplification to the extent that all methods in accordance with national law are acceptable, as long as the notification is done in writing.
- (7) The text of existing Article 11, paragraph 2 requires, apart from renumbering, further textual and logical clarification as well as an amendment to include administrative proceedings into the scope of proceedings to which TIR operations can be subjected in case of non-discharge or if the certificate of termination has been falsified or obtained in an improper or fraudulent manner.
- (8) The competent authorities are encouraged to inform the guaranteeing association in case TIR operations have become the subject of administrative or legal proceedings. They are obliged to do so before the expiry of the time limit of two years in case these administrative or legal proceedings may exceed the given time limit.
- (9) For reasons of clarity and practical implementation, it is useful to clearly separate the payment obligation of the guaranteeing association from the criteria under which the sums paid could be reimbursed, including the provision that such reimbursement could still take place after the prescribed deadline of two years has elapsed in case national legislation does so allow.

¹ English and French only, in the Russian text the existing term remains unchanged.

(10) The fact that the guaranteeing association may need to consult with the international organization referred to in Article 6, paragraph 2 over its position concerning the claim prior to payment does not affect the applicable deadline of three months.

(11) In order to improve the application of Article 28, paragraph 2 it is required to clearly stipulate the criteria for the termination of a TIR operation in case the goods are placed under another Customs procedure or another system of Customs control,

Has adopted the following amendments in accordance with the provisions of Article 59 of the Convention:

Article 1 (q), line 1

For approved read authorized

Article 1 (q), line 2

For surety read guarantor²

Article 1 (q)

After Article 1 (q) *insert* a new paragraph (r) *to read*:

(r) 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.

Article 8, paragraph 1

Modify paragraph 1 *to read*:

1. The guaranteeing association shall undertake to pay up to the maximum of the guaranteed amount of the import and export duties and taxes together with any default interest due under the Customs laws and regulations of the Contracting Party in which an irregularity leading up to a claim against the guaranteeing association has been established in connection with a TIR operation. It shall be liable, jointly and severally with the persons from whom the sums mentioned above are due, for payment of such sums.

Article 8, paragraph 7

Delete the text of paragraph 7

Article 10, paragraph 2, line 1

For country read Contracting Party

Article 11, paragraph 1

Modify paragraph 1 *to read*:

1. Where a TIR operation has not been discharged, the competent authorities shall:
 - (a) notify the TIR Carnet holder at his address indicated in the TIR Carnet of the non-discharge;
 - (b) notify the guaranteeing association of the non-discharge.

² English and French only, in the Russian text the existing term remains unchanged.

The competent authorities shall notify the guaranteeing association with a maximum period of one year from the date of acceptance of the TIR Carnet by those authorities or two years when the certificate of termination of the TIR operation was falsified or obtained in an improper or fraudulent manner.

Article 11, paragraph 1

After paragraph 1 *insert* a new paragraph 2 to *read*:

2. Where the payment of the sums mentioned in Article 8, paragraphs 1 and 2 becomes due, the competent authorities shall, so far as possible, require payment from the person or persons liable for such payment before making a claim against the guaranteeing association.

Article 11, paragraph 2

Renumber paragraphs 2 and 3 to *become* paragraphs 3 and 4.

Article 11, new paragraph 3

Modify paragraph 3 to *read*:

3. The claim for payment of the sums referred to in Article 8, paragraphs 1 and 2 shall be made against the guaranteeing association at the earliest three months after the date on which the association was notified that the operation had not been discharged or that the certificate of termination of the TIR operation had been falsified or obtained in an improper or fraudulent manner and not more than two years after that date. However, in cases of TIR operations which, during the above-mentioned period of two years, become the subject of administrative or legal proceedings concerning the payment obligation of the person or persons referred to in paragraph 2 of this Article, any claim for payment shall be made within one year of the date on which the decision of the competent authorities or courts becomes enforceable.

Article 11, new paragraph 4

For the existing text *read*:

4. The guaranteeing association shall pay the amounts claimed within a period of three months from the date when a claim for payment is made against it.

5. The sums paid shall be reimbursed to the guaranteeing association if, within a two year period following the date on which the claim for payment was made against it, it has been established to the satisfaction of the competent authorities that no irregularity was committed in connection with the TIR operation in question. The two year time limit may be extended in accordance with national legislation.

Annex 6, Explanatory Note 0.8.3, line 1

For Customs authorities *read* Contracting Parties

Annex 6, Explanatory Note 0.8.5, line 1

For the guarantee is questioned *read* a payment request is made against the guaranteeing association

Annex 6, Explanatory Note 0.8.7

Delete Explanatory Note 0.8.7

Annex 6, Explanatory Note 0.10

Renumber Explanatory Note 0.10 to *become* Explanatory Note 0.10–1

Annex 6, Explanatory Note 0.10–1

After Explanatory Note 0.10–1 *insert* a new Explanatory Note 0.10–2 to *read*:

0.10–2 The phrase “or no termination has taken place” includes those situations where the certificate of termination has been falsified.

Annex 6, Explanatory Note 0.11–1

For the existing text *read*:

0.11–1 The method of notification in writing is left to national legislation.

Annex 6, Explanatory Note 0.11–2

For the existing text *read*:

0.11–2 The efforts to be made by the competent authorities to require payment from the person or persons liable shall include, at least, the sending of the claim for payment to the TIR Carnet holder, at his address indicated in the TIR Carnet, or the person or persons liable, if different, established in accordance with national legislation. The claim for payment to the TIR Carnet holder may be combined with the notification referred to in paragraph 1 (a) of this Article.

Annex 6, Explanatory Note 0.11–3

For the existing text *read*

0.11–3–1 In deciding whether or not to release the goods or vehicle, competent authorities should not, when they have other means in law of protecting the interests for which they are responsible, be influenced by the fact that the guaranteeing association is liable for the payment of duties, taxes and default interest payable by the holder of the Carnet.

0.11–3–2 The competent authorities may inform the guaranteeing association that administrative or legal proceedings concerning the payment obligation were initiated. In any event, the competent authorities shall inform the guaranteeing association of such proceedings that may be terminated after the two year time limit before that time limit has expired.

Annex 6, Explanatory Note 0.11–4

Add a new Explanatory Note 0.11–4 to *read*

0.11–4 If a guaranteeing association is asked, in accordance with the procedure set out in this Article, to pay the sums referred to in Article 8, paragraphs 1 and 2, and fails to do so within the time-limit of three months prescribed by the Convention, the competent authorities may rely on national regulations in requiring payment of the sums in question because what is involved in such cases is the a failure to carry out a contract of guarantee entered into by the guaranteeing association under national law. The time limit also applies in the event that the guaranteeing association, on receipt of the claim, consults the international organization referred to in Article 6, paragraph 2 over its position concerning the claim.

Annex 6, Explanatory Note 0.28

Renumber Explanatory Note 0.28 to *become* Explanatory Note 0.28–1

After Explanatory Note 0.28–1 *insert* a new Explanatory Note 0.28–2 to *read*:

0.28–2 This Article provides that the termination of a TIR operation shall be subjected to the goods being placed under another Customs procedure or another system of Customs control. This includes clearing the goods for home use (either full or conditionally), the transfer across the border to a third country (export), or to a free zone, or the storage of the goods in a place approved by the Customs authorities while awaiting the declaration for another procedure.

Annex II

Proposals for comments for endorsement by the Administrative Committee for the TIR Convention

Comment to Explanatory Note 0.8.3, last sentence

Delete last sentence³

Comments to Article 11, paragraph 1

Delete comment Payment of duties and taxes

Comments to Article 11, paragraph 3

After comment to Article 11, paragraph 3 *insert* a new comment to *read*

Claim for payment of duties and taxes

The claim for payment should be supported by copies of the relevant documentation. In cases where part of the goods has been subject to an irregularity, the competent authorities should apportion the claim for payment of the evaded duties and taxes referred to in Article 8, paragraphs 1 and 2 accordingly. Without prejudice to any national provisions concerning the right of appeal, should the guaranteeing association obtain alternative proof of the termination of the TIR operation, it should submit the proof to the competent authorities who notified the non-discharge of the TIR operation.”

Comments to Article 28

Delete comment Applicable procedures after termination of a TIR operation

³ Modification of comment subject to discussion by WP.30 (See: ECE/TRANS/WP.30/240, paragraph 27).