



Economic and Social Council

Distr.: General
1 December 2015

Original: English

Economic Commission for Europe

Inland Transport Committee

Working Party on Customs Questions affecting Transport

142nd session

Geneva, 9–12 February 2016

Item 4 (b) (iii) 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 to the Convention:

Audit requirements for an authorized international organization

Audit requirements for an authorized international organization

Note by the secretariat

I. Mandate

1. The Working Party at its 139th session, had requested the secretariat to prepare a document, together with IRU, on relevant aspects of an auditing procedure by a United Nations competent body or, in particular, persons duly authorized by the United Nations or other competent bodies (such as TIRExB or AC.2) to carry out inspections and audits of records and accounts relevant to the TIR Convention, of an authorized international organization (See ECE/TRANS/WP.30/278, paras. 21–22). At the same session, the Working Party also considered the amendment proposals submitted by the Russian Federation, specifically regarding Annex 8, Article 1 bis. Owing to the relevance of this proposal to the ongoing discussions on the so-called “o, p and q” provisions, the Working Party agreed that it would be beneficial to consider these proposals together (see ECE/TRANS/WP.30/278 para. 9).

2. At its 140th session, the Working Party took note of document ECE/TRANS/WP.30/2015/11 and, in particular, the combined proposals to amend Annex 8, Article 1 bis with new paragraphs 4 and 5 and Annex 9, Part III, paragraph 2 with new items (o), (p) and (q). Further to substantial discussions, the Working Party requested the secretariat to revise the document based on the comments received from Contracting Parties (ECE/TRANS/WP.30/280, para. 15 and Annex) and decided to revisit this issue again at its 141st session.

3. At its 141st session, the Working Party reviewed document ECE/TRANS/WP.30/2015/11/Rev.1 and, in particular, the proposals as revised by the secretariat on the basis of prior discussions. Further to substantial discussions, the Working Party requested the secretariat to prepare a new document, reflecting the observations of the Working Party, for consideration at its current session. The present document has been prepared by the secretariat in line with the request of the Working Party (see ECE/TRANS/WP.30/282, para. 19).

II. Background

4. The Working Party had elaborated a list of elements that should be reflected in the proposed provisions (see ECE/TRANS/WP.30/280, para.15 and Annex). These elements are:

- The authorized international organization (at present IRU) is annually audited by an independent external auditor, pursuant to Annex 9, Part III, paragraph 1(a);
- The annually consolidated audited accounts are made available to the Committee and the TIR Contracting Parties, in compliance with the provisions of Annex 9, Part III, paragraph 1(a);
- The costs of the yearly audits are covered by IRU (pursuant to standing practice).

5. The above obligations are already in force and complied with by IRU. It should be mentioned that these requirements refer to the overall competence and sound financial standing of IRU as an organization capable of organizing and managing the guarantee chain and, thus, eligible for authorization or renewal of authorization. This is why such consolidated financial statements ought to be submitted annually, as to ensure the continued eligibility of the organization to be authorized. The statements provided, thus, refer to the financial situation of IRU as a whole, not only to separate TIR related accounts. By contrast, the proposed provisions for Annex 9, Part III, paragraphs (o), (p) and (q), refer to the requirement to maintain separate records and accounts relating to the TIR activities of IRU, and to have those separate records and accounts also audited and examined by the Committee.

6. Further to the above requirements, the Working Party decided that the new provisions should, at minimum, include the following elements:

- AC.2 should have the power to provide concrete guidance and ask for further examinations from the independent external auditor, focused on TIR related activities;
- AC.2 should receive the annual audited financial statements and audit report from the authorized international organization as well as any other additional report on the extra examinations requested by AC.2 (see first bullet point);
- AC.2 should be informed annually by the secretariat about all documents submitted by IRU in the framework of Annex 9, Part III, including the audited financial statements and reports of the auditors;
- AC.2 could decide to examine the submitted documents in detail;
- In case the examination of all submitted documents results in any problem or doubt with regard to any particular aspect of the audit, AC.2 shall, at least once every three years, request that specific additional audits be carried out by the competent United Nations bodies or an independent audit company (costs of such additional audit should be covered by [to be determined by the Working Party]);

7. On the basis of the above, the secretariat had redrafted and, where possible or necessary, simplified the proposals (see ECE/TRANS/WP.30/2015/11/Rev.1), for the consideration of the Working Party at its 141st session.

8. At its 141st session, the Working Party agreed (see ECE/TRANS/WP.30/282, para 19):

(a) that draft Annex 8, Article 1 bis, paragraph 5 should reflect the requirement that the results of the examinations to be conducted by the Committee should be made available to Contracting Parties at all times;

(b) to clarify in Annex 8, Article 1 bis, paragraphs 4 and 5 that the audits and examinations conducted by or on behalf of the Committee do not need to be strictly limited in scope by the originally submitted documents, but that, rather, the scope should be ideally determined by the object or overall purpose of the examination;

(c) the reasons for such examinations should be based on risk assessment and, possibly, be conducted by the TIR Executive Board (TIRExB); and

(d) procedural guidelines should be established on the modalities of mandating, organizing and conducting additional audits and examinations, possibly by means of drafting an Explanatory Note to Annex 8, Article 1 bis, paragraph 6.

III. Revised draft proposals based on the discussions of the Working Party at its 141st session

9. The secretariat has re-drafted the provisions based on the above requirements of the Working Party. Deletions are marked with ~~strike through~~ and new text is marked in ***bold italics***.

10. Annex 8, Article 1 bis, new paragraphs 4, 5 and 6:

“4. The ***Administrative*** Committee shall receive ***and examine*** the annual audited financial statements and audit report(s) submitted by the international organization pursuant to the obligations under Annex 9, Part III, ~~in order to ensure the effective organization and functioning of the international guarantee system.~~ In the course and within the scope of its ***examination*** ~~review of such submitted documents,~~ the ***Administrative*** Committee may request ~~that additional information, clarifications or documents be provided~~ by the international organization or the independent external auditor, ~~in order to enable or facilitate a detailed examination of the submitted documents.~~

5. Without prejudice to the examination mentioned in paragraph 4, the ***Administrative*** Committee shall, ***on the basis of a risk assessment,*** ~~on substantiated grounds,~~ have the right to request additional examinations to be carried out, at least once every three years. ***The Administrative Committee shall mandate the TIR Executive Board or request the competent United Nations services to carry out the risk assessment.***

The scope of ~~such~~ additional examinations shall be determined by the ***Administrative*** Committee, ***taking into account the risk assessment of the TIR Executive Board or of the competent United Nations services,*** ~~based on the particular aspect(s) of the submitted original documents that have given rise to the request. The Committee shall also determine whether such specific additional examinations shall be carried out by the competent United Nations Services or an independent audit company.~~

The results of all examinations referred to in this article shall be kept by the TIRExB. The Contracting Parties shall, at all times, have access to these records.

6. The procedure ~~to~~ *for undertaking* ~~implement~~ the additional examinations shall be approved by the Committee.

Explanatory Note to Annex 8, Article 1 bis, paragraph 6

The Administrative Committee may ask the competent United Nations services to perform the additional examination. The Administrative Committee may, alternatively, decide to engage an independent external auditor and mandate the TIRExB to prepare the terms of reference of the audit, based on the object and purpose of the audit as determined by the Administrative Committee. The terms of reference shall be approved by the Administrative Committee. The additional examination by an external independent auditor shall result in a report and a management letter that shall be submitted to the Administrative Committee. In such a case, the financial cost of engaging an independent external auditor, including the related procurement procedure, shall be incurred by the TIRExB budget. (see section IV “Comments by the secretariat)

Comment to the Explanatory Note to Annex 8, Article 1 bis, paragraph 6

The competent United Nations services will independently decide, based on resource availability and on the results of their own risk assessment, whether they would perform such additional examination.

11. Annex 9, Part III, paragraph 2, new paragraphs (o), (p) and (q):

“(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;

(p) provide its full and timely cooperation, including, but not limited to, allowing access to the above records and accounts to the competent United Nations Services or to any other duly authorized competent entity, and at all times facilitating additional inspections and audits performed by them on behalf of Contracting Parties, pursuant to Annex 8, Article 1 bis, paragraphs 5 and 6.

(q) engage an independent external auditor to conduct annual audits of the records and accounts mentioned under paragraph (o). 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 which shall be submitted to the Committee.”

IV. Comments by the secretariat

12. The Working Party may wish to recall that in March 2015 the United Nations Office of Internal Oversight Services (OIOS) in Geneva asked the opinion of its headquarters in New York on the provisions (o), (p) and (q). The secretariat was advised against referring to OIOS or the United Nations Board of External Auditors (BOA) by name in the Convention. As such, these departments have not, equivalently, been referred to by name also in the proposed provisions for Annex 8, Article 1 bis.

13. Concerning the costs attached to the engagement of an independent external auditor, the Working Party should note that such an exercise performed would entail a lengthy

procurement procedure. Furthermore, it should be noted that the budget and cost plan of the TIRExB and the TIR secretariat does not (yet) include provision for the cost of such a procedure. Before the Committee could mandate TIRExB to hire an independent external auditor, the relevant adjustments would have to be made to the budget and cost plan, to accommodate this additional expense, which would also result in a significant increase in the amount per TIR Carnet. Furthermore, the relevant adjustments would have to, also, be made to the UNECE-IRU agreement.

14. Alternatively, the Administrative Committee may consider other solutions such as, but not limited to, the possibility of performing the additional examinations on the basis of contributions by the TIR Contracting Parties. The modalities of this would need to be further explored.

15. The secretariat would like to underline that the issue of the financing of additional examinations would have to be resolved before the envisaged provisions can be implemented.

15. The secretariat would like to underscore that, considering that the additional examinations are to be triggered by the results of risk assessments, it might not be necessary to indicate a periodicity in Annex 8, Article 1 bis, new paragraph 5. Indeed, risk assessment procedures generally already encompass a random factor that, under a predefined probability, would trigger an additional examination at unforeseeable intervals.

16. Finally, it should be highlighted that the procedure of Annex 8, Article 1 bis, new paragraphs 4–6 can only be triggered after all the elements of Annex 9 part III have been fulfilled, including provisions o, p and q. That is to say that the procedure would, logically be as follows:

- (a) The IRU will submit all documents under Annex 9 part III;
- (b) The IRU will also submit the audit report and management letter resulting from the audit on the separate TIR accounts as stipulated in draft paragraphs o and q;
- (c) The Administrative Committee will receive these documents;
- (d) The Administrative Committee is yet to decide on how it will examine these documents;
- (e) Assuming the Administrative Committee is satisfied with the received information, there is no reason to trigger the procedure for an additional examination, unless this is required to take place at least once every three years;
- (f) The Administrative Committee may decide at [random] intervals to request an assessment of risk, on the basis of which an additional examination may or may not be warranted.

17. In conclusion, the secretariat is of the view that agreement on paragraphs o, p and q, as well as the way in which the Committee will review the documents and information under Annex 9, part III should be prioritized, as it is the basis of any further actions the Committee may consider taking in the future.

VIII. Considerations by the Working Party

18. The Working Party is invited to consider the revised proposals for an audit procedure as prepared on the basis of the discussions at the previous session, as well as discuss the way forward.