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Item 3 (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

Revision 1

Note by the secretariat*

I. Mandate

1. The Working Party at its previous session, had requested the secretariat to prepare a document, together with the 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). The Working Party took note of document ECE/TRANS/WP.30/2015/11 and, in particular, the proposals in paras. 25–26 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 current session.

* This document was submitted late due to resource constraints.

2. The present document has been prepared by the secretariat in line with the request of the Working Party. The revised portion of the document can be found under section VII.

II. Amendment proposals containing audit requirements

3. Proposal by the Russian Federation (2014):

To add the following paragraphs 4 and 5 to Annex 8, Article 1 bis:

“4. The Committee shall conduct regular examinations of all records and accounts of the international organization in order to ensure the effective organization and functioning of the international guarantee system relating to the application of the Convention, with subsequent disclosure of the results of such examinations to the Contracting Parties. Such examinations shall be conducted at least once a year.

5. As part of the examination mentioned in subparagraph 4, the Committee shall carry out independent audits of the activities of the international organization and guaranteeing associations, with subsequent disclosure of the results to the Contracting Parties.”

4. Proposal by the secretariat (2010):

To add the following provisions (o), (p) and (q) to Annex 9, Part III, paragraph 2:

“(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) 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 and at all times facilitate inspections and audits performed by them;

(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.”

III. Comments received (in 2011) from Contracting Parties on the provisions (o), (p) and (q)

5. The secretariat received inputs from the following countries (in English alphabetical order): Iran (Islamic Republic of), Kazakhstan, Russian Federation, Turkey and Ukraine. A summary of their comments is given below.

6. Iran (Islamic Republic of) is of the view that the provisions of the Agreement between IRU and UNECE meet all the requirements of transparency and strong financial position and, because of that, it would be appropriate to consider new Annex 9, Part III without (o), (p) and (q).

7. Kazakhstan feels that, in substance, the draft new Annex 9, Part III duplicates the provisions of the UNECE–IRU Agreement which meet all the requirements of transparency and sound financial standing. For this reason, Kazakhstan sees no need for introducing (o), (p) and (q), as the requirements therein have been already fulfilled by the international organization and included in the UNECE–IRU agreement.

8. The Russian Federation proposes to keep (o) unchanged and to delete in (p) the reference to other persons duly authorized by the United Nations. To streamline audits by various actors and keep to a minimum possible differences between the outcome of external audits and audits by the United Nations services, it is also proposed that (p) be complemented with a new provision stipulating that audits by the United Nations services should be conducted upon request and according to the guidelines of AC.2. Thus, the following wording of (p) is proposed: "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 requests and terms of reference established by the TIR Administrative Committee". The Russian Federation supports the proposed wording of (q), but feels that the issue of correspondence between the ISA and the national law of the country where the international organization is resident should be studied further.

9. Turkey fully supports the proposal for a separate and detailed description of the authorization and duties of an international organization through the introduction of a new Part III to Annex 9. Turkey is also of the view that, to ensure efficiency and transparency of the TIR system, it is necessary that the authorized international organization be subject to audit according to the TIR Convention. In parallel with Annex 9, Part I Article 1 (f) (vi) which requires that the national guaranteeing associations "...allow the competent authorities to verify all records and accounts kept relating to the administration of the TIR procedure", records and accounts of the international organization should be audited as well. To this end, Turkey supports the draft new Annex 9, Part III, including provisions (o), (p) and (q). On the other hand, taking into account the discussions at the 127th session of WP.30, it is considered that in (p) the reference to "other persons duly authorized by the United Nations" should be deleted.

10. Ukraine proposes to delete item (p) and modify (q) to read "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 the applicable national legislation".

IV. Comments received in 2014–2015 from Contracting Parties on Annex 8, Article 1 bis, paragraphs 4 and 5

11. The secretariat received inputs from the following countries (in English alphabetical order): Belarus, European Union (EU), Turkey and Switzerland. IRU also made some comments. A summary of their comments is given below.

12. Belarus supports the proposal to amend Annex 8, Article 1 bis to extend the competence of AC.2 to conducting regular examinations of the all records and accounts kept by IRU in relation to the application of the Convention.

13. The EU welcomes any proposal which would achieve full transparency of the financial issues related to the functioning of the TIR system. In this sense, the EU also suggests to continue discussing the amendment proposals to the TIR Convention relating to the audit requirements for an authorized international organization. The EU also supports the request made by TIRExB to UNECE to seek advice on the implementation of the new

obligations under Annex 9, Part III and on the proposed provisions (so called o, p, q) from the United Nations OIOS as reported in ECE/TRANS/WP.30/276, para. 21.

14. Turkey sees the delegation of authority to AC.2 to conduct periodic examinations of all records and accounts of IRU relating to application of the Convention, with subsequent disclosure of the results of such examination to the Contracting Parties, as a move towards transparency and accountability of the international organization. It would reinforce the well-being and success of the TIR system. On the other hand, Turkey indicates that the amendment proposal to subparagraph 5 contains “carry[ing] out independent audits” as well, which most probably might bring a requirement for a matter of financial resources. Without addressing the financial background of the foreseen activity, the arrangement might remain ineffective. Accordingly, the wording of the proposal to subparagraph 5 might be edited in order to give AC.2 the option for choosing the way on how it fulfils this mandate by using the word “may” instead of “shall.” Turkey further believes that the proposal has virtually the same content with the proposal which came up with the amendment packages and the approval of the revaluation process of the articles (o), (p) and (q) in Annex 9, Part III. Therefore, it would be more appropriate to unite this proposal together with the already existing studies.

15. Switzerland indicates that according to the proposed paragraph 4, Contracting Parties should conduct regular examinations of all records and accounts of the international organization. The proposed paragraph 5 stipulates that the audits carried out have been conducted independently. In the view of Switzerland there seems to be a contradiction between these two provisions. Usually, the bodies authorized to conduct such audits are trusted international companies, which operate independently from their clients. This being the case, AC.2 could be informed of the results of the audit and invite, if required and in consultation with the international organization, a representative of the audit company to participate in its meetings. It goes without saying that the examinations by AC.2 are limited to the application of the TIR Convention by the concerned international organization. In conclusion, this proposal requires further discussions.

16. IRU is not opposed to providing requested documentation, or to undergoing a specific audit related to the management of the TIR system that may be required by virtue of the TIR Convention, as results from its current version or would result from any amendment. IRU already supported the idea of including "more transparency requirements in the Convention" during a previous meeting of the Working Party.

V. Consultations between the United Nations Office of Internal Oversight Services and UNECE secretariat

17. The secretariat met several times with OIOS in Geneva to discuss the requirements to be fulfilled by IRU as well as the wording of the possible new provisions (o), (p) and (q).

18. OIOS in Geneva has, in March 2015, asked the opinion of its headquarters in New York on the provisions (o), (p) and (q). The services in New York were in favour of including an audit clause based on the one contained in the general conditions of contracts for the provisions of services to the United Nations. However the secretariat was advised against referring to OIOS or the United Nations Board of External Auditors (BOA) by name in the Convention.

19. OIOS also clarified that it selects its audits on the basis of risk assessment. Therefore, OIOS will not perform any audit on request, but will include any information it receives in its risk assessment.

VI. Consultations between UNECE and IRU secretariats

20. After analysing the amendment proposals and received comments, and following consultation with IRU, the UNECE secretariat is of the view that the proposals seem complementary.

21. From the received comments by Contracting Parties it could be concluded that there is a broad support for providing the Committee with the possibility to conduct regular examinations of the accounts of the international organization regarding the application of the Convention. Various Contracting Parties mention also that in provision (p) the reference to “other persons duly authorized by the United Nations” should be deleted.

22. However, since the Committee is physically not in the position to check the records and accounts on site of the international organization, such examination has to be conducted on the basis of documentation and financial statements submitted by the international organization in fulfilment of Annex 9, Part III. In order to assure the Committee that the submitted financial statements are accurate and truthful, they should be accompanied by an audit report by an independent auditor. It is a standard practice that audit reports are financed by the auditee. To facilitate the examination by the Committee of such financial matters, the Committee could invite the representative of the independent auditor to attend that session. Furthermore, to provide the Committee with flexibility in this task, the Committee could also request that such examinations are performed by the competent United Nations services.

23. Taking into account paras. 18–23 above, the UNECE secretariat suggests that the amendments proposals could be modified as follows. The proposed modifications to the original amendments proposals are marked in bold and strikethrough.

24. To add the following paragraphs 4 and 5 to Annex 8, Article 1 bis:

“4. The Committee ~~shall~~ **may** conduct ~~regular~~ **yearly** examinations of ~~all records and accounts of the international organization~~ **the records and accounts relating to the application of the Convention based on documentation submitted by the international organization, as per Annex 9, Part III**, in order to ensure the effective organization and functioning of the international guarantee system ~~relating to the application of the Convention~~, [with subsequent disclosure of the results of such examinations to the Contracting Parties]¹. ~~Such examinations shall be conducted at least once a year.~~

5. ~~As part of~~ **Without prejudice to** the examination mentioned in paragraph 4, the Committee **may request additional examinations to be carried out by the competent United Nations services of all records and accounts containing information and documentation which pertains to the organization and functioning of an international guarantee system and the printing and distribution of TIR Carnets maintained by the international organization** ~~carry out independent audits of the activities of the international organization and guaranteeing associations~~, with subsequent disclosure of the results to the **Committee.”** Contracting Parties.”

¹ Considering that the Contracting Parties are members of the Committee, this sentence is in the view of the secretariat superfluous.

25. To add the following provisions (o), (p) and (q) to Annex 9, Part III, paragraph 2:

“(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) — 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 and at all times facilitate inspections and audits performed by them;~~

(p) provide its full and timely cooperation with any inspections or audit carried out by the United Nations on behalf of Contracting Parties, upon the request of the TIR Administrative Committee, and relating to any aspect of its authorization as well as the obligations and operations performed thereunder. Such cooperation shall include, but shall not be limited to, the obligation of the international organization to make available its personnel and any relevant documentation for such purposes at reasonable times and under reasonable conditions and to grant to the United Nations or to any other competent entity duly authorized by the United Nations on behalf of Contracting Parties, access to the premises, personnel and documentation of the international organization at reasonable times and on reasonable conditions. The international organization shall require its agents, including, but not limited to, its attorneys, accountants or other advisers, to reasonably cooperate with any such inspections or investigations.²

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

VII. Revised draft proposals based on the discussions of the Working Party at its 140th session

26. The Working Party at its 140th session 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).

² Clause drafted by the UNECE secretariat based on the audit clause in the General conditions of Contracts for the provisions of Services to the United Nations as requested by OIOS. IRU proposed to maintain the clause as follows:

“(p) allow access to the above records and accounts to the competent United Nations Services and at all times facilitate inspections and audits performed by them; .”

27. 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.

28. The Working Party, based on the discussions and outcome of the 140th session, appears to be of the view that the Convention should include provision for extended or more detailed examinations of the financial standing of the authorized international organization both as a whole, as well as with regard to its specific TIR related activities. This is, at present reflected in the amendment proposals under discussion in two different points namely:

a) In Annex 8, Article 1 bis, dealing with the overall scope of responsibilities of the Administrative Committee, including adding the means by which the eligibility for authorization and the financial standing of the international organization will be assessed; and

b) in Annex 9, Part III, where additional requirements for audits of TIR related separate accounts “pursuant to authorization” (see Annex 9, Part III, paragraph 2) of the international organization are being discussed (so called o, p and q provisions).

29. The Working Party at its last session 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]);
- Audits of national guaranteeing associations should be regulated in the agreement between the Contracting Party and a national guaranteeing association, pursuant to the provisions of Annex 9, Part I;

30. At the session, the delegation of the Russian Federation informed the Working Party that it intends to introduce amendment proposals to include mandatory annual audits for national associations by an independent auditor in Annex 9, Part I.

Note by the secretariat: At present, national associations ought to provide proof of sound financial standing (Annex 9, Part I, paragraph 1(b)), presumably in the form of financial statements, to the authorizing competent authorities of the Contracting Party in which they seek to be authorized. There is no qualification of the means of proof – it is left to the competence of Contracting Parties. Furthermore, there is no requirement for recurring annual audits or requirement to provide such proof on a regular basis. There is only a reference to the obligation of associations to allow the verification of their TIR related records and accounts by the national competent authorities as and when the competent authorities decide to carry out such verifications. This provision should provide national competent authorities sufficient flexibility in implementing these provisions, taking into account respective national regulations and practice. If necessary, however, additional requirements could be outlined in the guarantee agreement.

31. On the basis of the above, the secretariat has redrafted and, where possible or necessary, simplified the proposals, for the consideration of the Working Party, as follows:

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

“4. The Committee shall receive 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 review of such submitted documents, the 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 Committee shall, on substantiated grounds, have the right to request additional examinations to be carried out, at least once every three years.

The scope of such additional examinations shall be determined by the Committee, 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.

6. The procedure to implement the additional examinations shall be approved by the Committee.

Note by the secretariat: It is proposed to keep these new provisions of Annex 8 simple and flexible, providing the scope of rights of the Committee without going into excessive detail. Paragraph 6 would allow the Committee to decide, at each occasion, by who and how the additional examination will be performed, as well as on the financing aspect. The Working Party may wish to recall that the United Nations Office of Internal Oversight Services has informed the secretariat that it will not perform examinations on request, but it may use information provided to it to perform its own risk assessment, on the basis of which it may or may not decide to perform an audit. With this in mind, it is preferable to allow the flexibility of deciding on the process on an ad hoc basis e.g. the possibility of additional audits by an independent external auditor. At the same time, the “competent United Nations services or other duly authorized competent entities” may be referred to in Annex 9, Part III, para. (p), because paragraphs (o), (p) and (q) are by design and intent more specific/detailed provisions.

33. 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.”

VIII. Considerations by the Working Party

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