



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.1.2008
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2008/0010 (ACC)

Proposal for a

COUNCIL DECISION

**on the position to be taken by the Community concerning the proposal to amend the
Customs Convention on the International Transport of goods under cover of TIR
carnets (TIR Convention 1975)**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The Customs Convention on the international transport of goods under cover of TIR carnets (TIR Convention) of 14 November 1975 was approved on behalf of the European Economic Community by way of Council Regulation (EEC) No 2112/78. The Convention entered into force in the Community on 20 June 1983.

The purpose of the proposed Decision is to introduce a new Explanatory Note to Article 3 of the TIR Convention. This amendment concerns the transport of passenger cars on their own wheels under the TIR procedure. The TIR Executive Board and the TIR Secretariat were informed of different interpretations of the provisions of Article 3 (a) (iii) which requires clarification by means of the proposed new Explanatory Note.

- **General context**

The TIR Convention, which is administrated by the United Nations Economic Commission for Europe (UNECE) based in Geneva, established a customs transit procedure for the international movement of goods by road. The Convention enables goods, which are under customs and tax suspension, to cross international borders with a minimum of intervention en route by the customs authorities. By easing traditional impediments to the international movement of goods, the TIR system encourages the development of international trade. By reducing delays in transit, it enables significant economies to be made in transport costs. The most important advantage of the system is the fact that the TIR Convention provides, through its international guarantee chain, relatively simple access to the required guarantees.

Over recent months the TIR Executive Body was informed of different interpretations, at national level, of the provisions of Article 3 (a) (iii) relating to vehicles "exported and therefore themselves considered as goods travelling by their own means". Some Contracting Parties seemed to accept that passenger cars travelling on their own wheels fall under the above description, while in other Contracting Parties national legislation explicitly forbids the use of TIR Carnets for transport of passenger cars, unless these cars are loaded onto another vehicle. These differences in interpretation had led to situations where TIR Carnets had been opened for transport of passenger cars to one Contracting Party, but were subsequently refused by a Customs office en route of another Contracting Party. Following an exchange of views the TIRExB felt that this issue should be clarified from the legal point of view and proposed a new Explanatory Note. This proposal was discussed by the Working Party on Customs Questions Affecting Transport and the Administrative Committee for the TIR Convention and no objections were raised.

- **Existing provisions in the area of the proposal**

There are no existing provisions in the area of the proposal.

- **Consistency with the other policies and objectives of the Union**

The proposed Decision is consistent with the common policy in trade and transport. The TIR system, providing facilitation in road transport, allows goods to travel across 67 Contracting Parties with a minimum of interference by customs administrations and provides, through an international guarantee chain, relatively simple access to the required guarantees. The simplifications achieved through the TIR Convention are in line with the revised Lisbon strategy.

2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

Consultation methods, main sectors targeted and general profile of respondents

Consultations on the proposal were carried out with the International Road Transport Union, all guaranteeing associations, within the TIR Executive Board and customs authorities from the Contracting Parties to the TIR Convention. Consultations took place also within the Customs Code Committee meetings and sessions of the Working Party on Customs Questions Affecting Transport and the Administrative Committee for the TIR Convention.

Summary of responses and how they have been taken into account

Favourable opinion

- **Collection and use of expertise**

There was no need for external expertise.

- **Impact assessment**

The rules of using the TIR carnet for passenger cars exported and therefore travelling on their own wheels need to be clearly specified and explained in the TIR Convention.

By introducing this amendment the proper interpretation of Article 3 (a) (iii) in all Contracting Parties to the Convention is ensured. Possible problems for transport operators as regards customs controls of cars exported and therefore themselves considered as goods travelling by their own means are eliminated.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

This amendment proposes a new Explanatory Note to Article 3 of the TIR Convention.

- **Legal basis**

Articles 133 and 300 (2) of the Treaty establishing the European Community

- **Subsidiary principle**

The proposal falls under the exclusive competence of the Community. The subsidiary

principle therefore does not apply.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The proposal is in conformity with the principle of proportionality. It implements an amendment to the international agreement which as such respects the principle of proportionality.

The proposal concerns a new Explanatory Note. The aim of this amendment is provide clear interpretation as regards the use of Article 3 (a) (iii) of the TIR Convention.

- **Choice of instruments**

Proposed instruments: Decision.

Other means would not be adequate for the following reason(s).

International agreements and amendments to these arrangements are normally introduced into the Community's legal order by way of a Decision.

4) BUDGETARY IMPLICATION

The proposal has no implication for the Community budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 133, in conjunction with Article 300 (2) thereof,

Whereas:

- (1) The Customs Convention on the international transport of goods under cover of TIR Carnets (TIR Convention) of 14 November 1975 was approved on behalf of the Community by Council Regulation (EEC) No 2112/78 of 25 July 1978¹ and entered into force in the Community on 20 June 1983².
- (2) The TIR Executive Board was informed about serious problems as regards the use of the TIR carnet for passenger cars that are "exported and therefore considered as goods travelling on their own wheels". It was decided that a new Explanatory Note to Article 3 (a) (iii) of the Convention should be proposed that limits the possibility of transporting passenger cars on their own wheels under cover of TIR Carnets, as the extension of the TIR procedure to such goods could lead to a number of negative consequences and a higher risk of fraud.
- (3) In September 2007 the Administrative Committee for the TIR Convention decided that in order to provide for a proper application of Article 3 (a) (iii) of the TIR Convention a new Explanatory Note to this Article should be introduced. This new Explanatory Note aims to eliminate different interpretations, at national level, of the provisions of Article 3 that relate to vehicles exported and travelling by their own means.
- (4) The Community position concerning the proposed amendment should be determined,

¹ OJ L252, 14.09.1978

² OJ L31, 2.2.1983, p.13

HAS ADOPTED THIS DECISION:

Article 1

The Community's position within the Administrative Committee shall be to support the draft amendment annexed hereto.

Article 2

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*

ANNEX

Add a new Explanatory Note:

"0.3 (a) (iii) The provisions of Article 3 (a) (iii) do not cover passenger cars (HS-code 8703) travelling by their own means. However, passenger cars may be carried under the TIR procedure if transported by means of other vehicles as referred to in subparagraph (a) (i) and (a) (ii) of Article 3."