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Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, on the proposal to amend the Customs Convention on the International Transport of goods under cover of TIR carnets (TIR Convention 1975)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. 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 Union by way of Council Regulation (EEC) No 2112/78. The Convention entered into force in the Union on 20 June 1983.

The purpose of the proposed Decision is for the Union to adopt the latest amendments to the TIR Convention agreed by the UNECE Working Party on Customs Questions Affecting Transport and further adopted by the Administrative Committee for the TIR Convention, 1975, subject to completion of the EU's internal procedures.

On 5 July 2012, the Administrative Committee transmitted to the Secretary-General, in accordance with the provisions of article 59 (1) and (2) of the Convention, proposals of amendments to Articles 6.2 bis and Annex 9 to the text of the Convention, adopted at its fifty-third session held in Geneva on 9 February 2012. On 10 July The Secretary-General issued the Depository Notification C.N.358.2012.TREATIES, communicating that if by 10 July 2013 none of the Contracting Parties had notified any objections to the amendment proposals, they will enter into force on 10 October 2013.

1.2. General context

The TIR Convention, which is administered by the United Nations Economic Commission for Europe (UNECE), based in Geneva, has 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.

The UNECE Working Party on Customs Questions Affecting Transport agreed that some modifications of the TIR Convention are necessary. These modifications concern the amendment of Article 6 of the TIR Convention in order to introduce a new part III in Annex 9 to the TIR Convention establishing the conditions and requirements to be complied with by an international organization which is authorised to take on the responsibility for the effective organization and functioning of an international guarantee system and to print and distribute TIR Carnets. That international organization is currently the International Road Transport Organization (IRU).

This new Annex 9, part III will complement the purpose of Annex 9 which addresses access to the TIR procedure by the private sector and which already deals with the authorisations for national associations to issue TIR carnets as well as for natural and legal persons to utilize TIR Carnets.

1.3. Existing provisions in the area of the proposal

Article 6 and Explanatory notes to Article 6, paragraph 2 bis to the TIR Convention.

1.4. 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 68 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

2.1. 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 IRU. Consultations took place within the Customs Legislation Committee (Co-ordination Geneva) meetings and sessions of the UNECE Working Party on Customs Questions Affecting Transport.

Summary of responses and how they have been taken into account

Favourable opinion.

2.2. Collection and use of expertise

There was no need for external expertise.

2.3. Impact assessment

The proposed amendments do not change the substance of Annex 9 to the TIR Convention. However, the introduction of a new part III, will complement its purpose by defining clearly the roles and responsibilities of the all players in the TIR system for the purposes of transparency in its management. In addition, as the international organization is currently playing a vital role in the TIR system, the TIR Convention should clearly define this organization and explain how the procedure for authorisation of this organization should be applied. The introduction of these conditions and requirements in the legal text of the TIR Convention will also simplify the text of the written agreement between UNECE and the international organization in accordance with Explanatory Note 0.6.2 bis 2.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

The proposed Decision lays down the position to be taken by the Union concerning the proposal to amend the Customs Convention on the International Transport of goods under cover of TIR carnets.

3.2. Legal basis

Articles 207 and 218 (9) of the Treaty on the Functioning of the European Union.

3.3. Subsidiarity principle

The proposal falls within an area of exclusive competence of the European Union (common commercial policy) and therefore does not deserve an examination with regard to the principle of subsidiarity (Article 5 (3) of the Treaty on the Functioning of the European Union).

The proposed amendments were preliminarily adopted by the UNECE Working Party on Customs Questions Affecting Transport and Administrative Committee for the TIR Convention.

3.4. Proportionality principle

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

3.5. Choice of instruments

Proposed instrument: Decision.

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

4. BUDGETARY IMPLICATION

The proposal has no implication for the Union budget.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207, in conjunction with of Article 218 (9) thereof,

Having regard to the proposal from the European Commission,

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 Union by Council Regulation (EEC) No 2112/78 of 25 July 1978¹ and entered into force in the Union on 20 June 1983².
- (2) A consolidated version of the TIR Convention was published as Annex to Council Decision 2009/477/EC of 28 May 2009³, according to which the Commission shall publish future amendments to the Convention in the Official Journal of the European Union indicating their date of entry into force.
- (3) Following extensive deliberations, in October 2011 the UNECE Working Party on Customs Questions Affecting Transport decided that some modifications of the TIR Convention are necessary. These modifications concern Article 6 and the introduction of a new Part III in Annex 9 to the TIR Convention, establishing the conditions and requirements to be complied with by an international organization which is authorised to take on the responsibility for the effective organization and functioning of an international guarantee system and to print and distribute TIR Carnets.
- (4) The proposed amendments to the TIR Convention introduce a definition of the international organization and clearly define the authorisation process of this organization. The introduction of a new part III of Annex 9 will complement its purpose by defining clearly the roles and responsibilities of all players in the TIR system and increase the transparency of its management. The introduction of these conditions and requirements in the legal text of the TIR Convention will also simplify the text of the written agreement between UNECE and the international organization in accordance with Explanatory Note 0.6.2 bis 2.
- (5) Delegates of all Member States expressed their positive opinion as regards the amendment proposal within the Customs Legislation Committee (Co-ordination Geneva).

¹ OJ L 252, 14.09.1978, p. 1.

² OJ L 31, 2.2.1983, p. 13.

³ OJ L 165, 26.6.2009, p. 1.

- (6) In its 53rd session in February 2012 the Administrative Committee for the TIR Convention adopted the proposed amendments of the TIR Convention, subject to the completion of the EU's internal procedures.
- (7) On 5 July 2012, the Administrative Committee transmitted to the Secretary-General, in accordance with the provisions of article 59 (1) and (2) of the Convention, proposals of amendments to Articles 6.2 bis and Annex 9 to the text of the Convention, adopted at its fifty-third session held in Geneva on 9 February 2012. On 10 July the Secretary-General issued the Depository Notification C.N.358.2012.TREATIES, communicating that if by 10 July 2013 none of the Contracting Parties had notified any objections to the amendment proposals, they will enter into force on 10 October 2013.
- (8) Therefore, the Union position concerning the proposed amendment should be determined,

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the European Union in the Administrative Committee for the TIR Convention shall be based on the draft amendment attached to this Decision.

Article 2

This Decision is addressed to the Member States.

The Commission shall publish the amendment, once adopted, in the Official Journal of the European Union indicating its date of entry into force.

Done at Brussels,

For the Council
The President

ANNEX

In Article 6, a new paragraph is introduced as follows:

Article 6, paragraph 2 bis

Modify paragraph 2 bis to read:

2 bis An international organization shall be authorized by the Administrative Committee to take on responsibility for the effective organization and functioning of an international guarantee system. The authorization shall be granted as long as the organization fulfils the conditions and requirements laid down in Annex 9, Part III. The Administrative Committee may revoke the authorization if these conditions and requirements are no longer fulfilled.

In Annex 9, a new Part III is introduced as follows:

Annex 9, new part III

Insert a new part III to read:

Authorization of an international organization, as referred to in Article 6, to take on the responsibility for the effective organization and functioning of an international guarantee system and to print and distribute TIR Carnets

Conditions and requirements

1. The conditions and requirements to be complied with by an international organization in order to be authorized, in accordance with Article 6.2 bis of the Convention, by the Administrative Committee to take on the responsibility for the effective organization and functioning of an international guarantee system and to print and distribute TIR Carnets are:

(a) Proof of sound professional competence and financial standing for the effective organization and functioning of an international guarantee system and the organizational capabilities to fulfil its obligations under the Convention by means of annual submissions of consolidated financial statements duly audited by internationally recognized independent auditors;

(b) Absence of serious or repeated offences against Customs or tax legislation.

2. Pursuant to the authorization, the international organization shall:

(a) provide the Contracting Parties of the TIR Convention via the national associations affiliated to the international organization with certified copies of the global guarantee contract and proof of guarantee coverage;

(b) provide the competent bodies of the TIR Convention with information on the rules and procedures set out for the issue of TIR Carnets by national associations;

(c) provide the competent bodies of the TIR Convention, on a yearly basis, with data on claims lodged, pending, paid or settled without payment;

(d) provide the competent bodies of the TIR Convention with full and complete information on the functioning of the TIR system, in particular, but not limited to, timely and well founded information on trends in the number of non-terminated TIR operations, claims lodged, pending, paid or settled without payment that might give rise to concerns with regard to the proper functioning of the TIR system or that could lead to difficulties for the continued operation of its international guarantee system;

(e) provide the competent bodies of the TIR Convention with statistical data on the number of TIR Carnets distributed to each Contracting Party, broken down by type;

(f) provide the TIR Executive Board with details of the distribution price by the international organization of each type of TIR Carnet;

(g) take all possible steps to reduce the risk of counterfeiting TIR Carnets;

(h) take the appropriate corrective action in cases where faults or deficiencies with the TIR Carnet have been detected and report these to the TIR Executive Board;

(j) fully participate in cases where the TIR Executive Board is called upon to facilitate the settlement of disputes;

(k) ensure that any problem involving fraudulent activities or other difficulties with regard to the application of the TIR Convention is immediately brought to the attention of the TIR Executive Board;

(l) manage the control system for TIR Carnets, provided for in Annex 10 of the Convention, together with national guaranteeing associations affiliated to the international organization and the Customs authorities and inform the Contracting Parties and the competent bodies of the Convention of problems encountered in the system;

(m) provide the competent bodies of the TIR Convention with statistics and data on the performance of Contracting Parties with regard to the control system provided for in Annex 10;

(n) conclude, not less than two months before the provisional date of entry into force or renewal of the authorization granted in accordance with Article 6.2bis of the Convention, a written agreement with the United Nations Economic Commission for Europe secretariat, mandated by and acting on behalf of the Administrative Committee, which shall include the acceptance by the international organization of its duties set out in this paragraph.

3. When the international organization is informed by a guaranteeing association of a claim for payment, it shall, within a period of three (3) months inform the guaranteeing association of its position concerning the claim.

4. All information acquired, directly or indirectly, by the international organization under the Convention, which is by nature confidential or which is provided on a confidential basis, shall be covered by the obligation of professional secrecy and shall not be used or processed neither for any commercial purpose nor for any other purpose than for which it has been provided or disclosed to any third party without the express permission of the person or authority that provided it. Such information may, however, be disclosed without permission to competent authorities of Contracting Parties to this Convention, where there is an authorization or obligation to do so pursuant to provisions of national or international law or in connection with legal proceedings. The disclosure or communication of information shall take place in full compliance with data-protection provisions in force.

5. The Administrative Committee shall have the right to revoke the authorization granted in accordance with Article 6.2 bis in case of non-compliance with the above conditions and requirements. Should the Administrative Committee decide to revoke the authorization, the decision will become effective at the earliest six (6) months after the date of revocation.

6. The authorization of an international organization under the terms set out above shall be without prejudice to that organization's responsibilities and liabilities under the Convention.