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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.5.2009
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2009/0069 (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)**

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 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 for the Community to adopt latest amendments to the TIR Convention agreed by the UNECE Working Party on Customs Questions Affecting Transport.

1.2. General context

The TIR Convention, which is administrated 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 mainly articles that deal with the financial responsibility and recovery of the customs debt. By reorganizing and clarifying the relevant articles the procedure is easier to understand and to apply. Other amendments that were proposed introduce in the text of the Convention the definition of the international organization and clearly define the process of authorization of this organization to organize the international guarantee chain.

1.3. Existing provisions in the area of the proposal

Articles 1, 6, 8, 10 and 11 of 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 66 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 Code Committee 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 articles that define the recovery procedure within the TIR system but reorganize them so that it is easier to understand and apply this procedure. Additionally, as the international organization is present in the TIR system the Convention should clearly define this organization and explain how the procedure for authorisation of this organization should be applied.

By introducing these amendments the proper order of steps that are to be taken within the recovery procedure is clearly described by the Convention and detailed explanation of the responsibilities of all partners involved in the TIR system is ensured. Possible problems with regard to the application of current Article 8 and Article 11 are eliminated.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Summary of the proposed action

The proposed Decision adopts on behalf of the Community amendments to the TIR Convention.

3.2. Legal basis

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

3.3. Subsidiary principle

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

The proposed amendments were preliminarily adopted by the UNECE Working Party on Customs Questions Affecting Transport.

3.4. Proportionality principle

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.

3.4. Choice of instruments

Proposed instruments: Decision.

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 the second subparagraph of 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) In February 2009 the UNECE Working Party on Customs Questions Affecting Transport decided that some modifications of the TIR Convention are necessary. These modifications concern mainly articles that deal with the financial responsibility and recovery of the customs debt. By reorganizing and clarifying the relevant articles the procedure is easier to understand and to apply. Other amendments that were proposed introduce in the text of the Convention the definition of the international organization and clearly define the process of authorization of this organization to organize the international guarantee chain.
- (3) The proposed reorganization of articles and clear explanation of all steps that are to be taken within the recovery procedure makes this procedure easier to understand and to apply. Further explanation of the responsibilities of all partners involved in the TIR system makes the TIR system transparent.
- (4) All Member States expressed their positive opinion as regards the amendment proposal. The draft produced by the Working Party on customs Questions Affecting Transport was already discussed within the Customs Code Committee and it was preliminarily approved.
- (5) The next session of the Administrative Committee for the TIR Convention is scheduled for September 2009 and it is expected that all Contracting Parties to the

¹ OJ L252, 14.09.1978

² OJ L31, 2.2.1983, p.13

Convention will be ready to formally adopt proposed amendments of the TIR Convention.

- (6) Therefore, the Community position concerning the proposed amendment should be determined,

HAS ADOPTED THIS DECISION:

Article 1

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

Article 2

This Decision is addressed to the Member States.

Done at Brussels,

*For the Council
The President*

ANNEX

1. Change Article 1 (q) as follows:

Replace "approved" by "authorized"

2. Change Article 1 (q) as follows:

Replace "surety" by "guarantor"

3. In Article 1 insert a new paragraph (r) to read as follows:

"(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."

4. In Article 6 modify paragraph 2bis to read as follows:

"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."

5. In Article 8 modify paragraph 1 to read as follows:

"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."

6. In Article 8 delete paragraph 7

7. Change paragraph 2 of Article 10 as follows:

Replace "country" by "Contracting Party"

8. In Article 11 modify paragraph 1 to read as follows:

"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.

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."

9. In Article 11 insert a new paragraph 2 to read as follows:

"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."

10. In Article 11 renumber paragraph 2 to become paragraph 3.

11. In Article 11 modify paragraph 3 to read as follows:

"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."

12. In Article 11 renumber paragraph 3 to become paragraph 4.

13. In Article 11 modify paragraph 4 to read as follows:

"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."

14. In Article 11 insert a new paragraph 5 to read as follows:

"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."

15. In Annex 6 change Explanatory Note 0.8.3 as follows:

Replace "Customs authorities" by "Contracting Parties"

16. In Annex 6 change Explanatory Note 0.8.5 as follows:

Replace "the guarantee is questioned" by "a payment request is made against the guaranteeing association"

17. In Annex 6 delete Explanatory Note 0.8.7.

18. In Annex 6 renumber Explanatory Note 0.10 to become Explanatory Note 0.10-1

19. In Annex 6 insert a new Explanatory Note 0.10-2 to read as follows:

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

20. In Annex 6 modify Explanatory Note 0.11-1 to read as follows:

"0.11.-1 The method of notification is left to national legislation."

21. In Annex 6 insert a new Explanatory Note 0.11-2 to read as follows:

"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."

22. In Annex 6 renumber Explanatory Note 0.11-2 to become Explanatory Note 0.11-3-1

23. In Annex 6 change Explanatory Note 0.11-3-1 as follows:

Replace "Customs" by "competent"

24. In Annex 6 insert a new Explanatory Note 0.11-3-2 to read as follows:

"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."

25. In Annex 6 renumber Explanatory Note 0.11-3 to become new Explanatory Note 0.11-4.

26. In Annex 6 change Explanatory Note 0.11-4 as follows:

Replace "Article 11" by "this Article"

27. In Annex 6, Explanatory Note 0.11-4, at the end of the paragraph, insert a phrase to read as follows:

"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."

28. In Annex 6 renumber Explanatory Note 0.28 to become Explanatory Note 0.28-1

29. In Annex 6 insert a new Explanatory Note 0.28-2 to read as follows:

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."